No. 2400

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A CORPORATION, *et al.*,
Defendants and Appellants

JOHN L. SNYDER, *et al.*,
Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,
Interveners and Appellants

vs.

THE UNITED STATES OF AMERICA
Appellee

TRANSCRIPT OF RECORD

VOLUME VII

PAGES 3245-3788

LODGE
APR - 4 1914

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

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WM. D. FENTON,
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A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
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EVIDENCE IN REBUTTAL FOR COMPLAINANT

Whereupon MICHAEL KEBELBECK, called as a witness on behalf of complainant being duly sworn testified, that he was born in Bavaria, Germany, and is fifty-four years old, coming to the United States when he was twenty-four, and is living now at Cottage Grove, Lane County, Oregon, and has lived in Lane County twenty-four years. When he first came to Lane County he bought eighty acres of land west of Cottage Grove; was there awhile and then worked for the Booth-Kelly Lumber Company about fourteen or fifteen years logging, and then got a place on the Coast Fork south of Cottage Grove about seven miles. During the time that he has lived in Lane County he has become familiar with the character of the land in the vicinity where he lives. He worked for the Booth-Kelly Lumber Company east of Saginaw at a place called Bear Mountain in sections 2, 3, 5, 9, 15, 16, 17 and 21. They have a mill in section 16 now. He worked all around there in that country and up and down the flume, from there down to Saginaw, they sent him east and west and north and he looked at the timber and which way the road comes out to log and one thing and another there. He was also back a little at Fall Creek he logged there several years. He worked at Wendling five or six years and then at Deerhorn up the McKenzie River for three years on sections 21, 27, 22 and 28 in that country there. He worked in Wend-

ling six or seven years. When he was in Bavaria he farmed. He had worked there on a farm all the time and made a living there. When he came to Oregon he bought land here and then switched over to logging, but now he is going back to farming again. He is familiar with the general character of the soil in Lane County, in these different communities and knows part of township 20, range 4 west and has land in that and then in township 19 in Saginaw and then in Wendling, he believes in 17. He was through there. In township 20, range 4 west is where he located his eighty acres. He knows out there sections 26, 28, 34 and 35, some settlers back in there. He had a little ranch first in section 25 and knows all that through there. He prefers the McKenzie country. Wendling is good soil too and it is pretty good soil really all through there. These different sections mentioned by him are in township 20 south, range 4 west. He is not acquainted with any of the lands purchased by the Booth-Kelly Lumber Company from the Railroad Company in that vicinity, that is, in township 20 south, range 4 west, but is acquainted with the railroad lands in Lane County.

Whereupon witness testified:

Q. I will ask you whether, from your experience in farming, that land is valuable, or will be valuable for agricultural uses after the timber is removed?

A. Well, it will be. It will be, because I tried myself—I was in Fall Creek. I grubbed out a rod square in one place, I had a rod square, and in one place

I had 20 feet square. I dug out a place, and put a fence around it. My wife was along, and my two boys were along—wanted to get out and go wherever I went to. So we went and grubbed a piece of land, grubbed the roots out—salal brush and everything—grubbed it out in the fall, and put it in in the spring; and I had the best garden that ever a man could see anywhere. The boys, they come down from McKenzie or from Wendling, come up and said, "Well, Mike," they said, "you beat them all." And if I hadn't done it myself, I would never believe it. I had lettuce that grew up, just swift up, and radishes, and anything—turnips—anything I put in. It didn't need the water like it does down in the valley. That keeps moist up there, that soil, better than down in the valley. And then I had apples in winter, and I put them in the ground, the seed, and one year they grew that high (illustrating). The second year they grew six foot high, and I had 71 apple trees on one little space, and I know they grew. The fruit grows better up there, about 1000 feet up from the valley, than it does in the valley. It is better fruit. Its leaves are wide open green all summer, and down in the valley they curl up. And it don't need so much irrigation up at the top. Some way the soil don't dry out as quick as it does down below.

Q. Do you know whether the Booth-Kelly Lumber Company itself has used any of its land for the purpose of growing an orchard, or hay?

A. Not of orchard. But Booth-Kelly Company told me at first in Saginaw, they sent me up some seed,

orchard grass and timothy, and I had to sow it, burn and sow it. Had to burn first, burn the slashing, and then sow it; and that grew fine. As well as in Wendling they told me I should sow some, and I did. And at McKenzie there is the best crop of hay anywheres, in section 21. It is three and four feet high. You couldn't see hardly at all walking in it. That is the best I ever saw anywhere. It is on the MeKenzie. Well, at Wendling, too. The grass grows good in the burn, grows fine. Of course, after it kind of runs out, you want to grub it and work it good, and it will grow again.

Q. Well, now, how does that land there compare with similar soil that you have seen cultivated in Bavaria, as to quality of the soil, and rainfall, the way the land lays—whether level or rolling, or hilly, and all other conditions?

A. This soil seems to me stronger than where I had to work and grub in the Old Country. I can raise a heavier crop, and better potatoes. I don't know why, whether it is the new land, while that is old land, farmed a thousand years or something, and here, why, it is new. But here I can raise better stuff on the same thing than I can there. I don't know why it is—whether it is because that is old, or whether it is because this is new and everything here. But I can raise better stuff here than I can there on the same condition, the same ground.

Q. Is it just as hilly over there in Bavaria as this land is here?

A. Well, some is hillier. Some is hillier, but we

had to climb up and work it, though.

Q. Well, do they work land of that same kind over in the Old Country?

A. Yes, sir, we do. Yes, they do.

Q. Now, Mr. Kebelbeck, these different quarter sections of land that you know of that were purchased by Booth-Kelley Lumber Company from the railroad company, and the railroad lands that are still left and held by them in that general vicinity there where you are acquainted, I will ask you whether, in your judgment, a man could make a home on those quarter sections, and make a living for himself and his family?

A. Well, I know they can. I know they can, except I would take out some mountain pinnacles. There is a rock point up in there, and there is a mountain over there they call Oshkosh in Wendling; or there is, say, Bear Creek mountain—it comes right up steep. But outside of that, I will take any quarter section and make a good living on it.

Q. Well, now, how much land is covered by these mountain tops that you spoke of?

A. Well, those mountain tops I was speaking of, the pinnacle of it, I don't think it is more than about 160 acres.

Q. In each case?

A. In each case of that mountain what I would take out. I would not like to really tackle to farm it there.

Whereupon witness testified that he tried to buy some land from the Oregon and California Railroad Company near Cottage Grove. He left the place twelve years ago which he sold. About fourteen years ago or such a matter there was a forty back of his eighty, water he used for the house came out there, and he thought he had better buy it before anybody else bought it, so he would get the water for his house use. He applied to the Railroad Company to buy that forty and it replied that it was not for sale but that if it was, they would let him know. He wanted to get more land there, because there was a nice place on it like his, below on the flat. He wanted to extend his field further and it was good upland outside of the spring, good grazing land and some patches on it that could be grubbed out and worked and farmed. This was about fourteen years ago. Afterwards he moved to town and wanted to buy a piece of railroad land in section 35, a forty looking towards Cottage Grove but the Company would not sell it. It was not on the market they said. He is familiar with the land between Cottage Grove and his farm in section 32, township 21 south, range 3 west and with the land from there on to the divide on the west. He went over there once with his wife on a trail; that is pretty good land. He went from his place over to Brumbaugh Creek, Louis Geruh had a homestead out there. He believes that in every quarter section of the land except the mountain tops in that vicinity with which he is acquainted, a person could find about forty per cent, he could plow and there are lots of other things

that could grow on the rest, without plowing. There is grazing land and it could be used for all kinds of things without plowing. He thinks it is safe to say there is about forty per cent that could be plowed, in his judgment. They plow steeper land than that in the Old Country and have a hill-side plow which plows all one way. He was at the mills of the Southern Pacific Company at Marcola but was not very far back. The Wendling mill lies further up. He went through from there to McKenzie and saw men working but he did not go out in the woods much. The land around Marcola is good, is all right. It is not very hilly what he could see from the railroad and he went back to two mills there. It was all right as far as he could see. Where they were logging it was not very steep. He is acquainted up at Saginaw a whole lot, quite a few sections. He started in on section 9, then on sections 17, 5, 3, 8, 11, 10, 16, 21 and 15. He is acquainted with those sections up there in Saginaw all around the mill and cruised the timber. He is not exactly a timber cruiser but Booth-Kelley Lumber Company sent him and the superintendent of the Company out to look at a mill site on section 16 and the superintendent required them to cruise through the timber all through that country. In addition to these sections in these different townships or around these different mills referred to, he is acquainted in a general way with that country in that general vicinity and the other land in that general vicinity is just about the same general character through there as the land that he examined particularly. He

is a naturalized citizen and not interested in any of these lands in any way. His place is in section 32, township 21 south, range 3 west on the Coast Fork, which was an old donation land claim and his deed goes back to 1879 he believes. He never worked for the railroad company to speak of. When he first came to Cottage Grove he worked a few days on the section and then Japs were employed and he had to quit. This work for the railroad was when he first went in to that country twenty-three or twenty-four years ago and it was only for a few days, and with that exception he has never worked for the Oregon & California Railroad Company, nor for the Government.

Whereupon on cross-examination witness testified that he had never taken a homestead and does not think there is much left in Lane County to homestead. The bulk of the land that he has been over and examined is mostly timber land with fir and hemlock and is saw timber. The fir, hemlock and cedar is the principal stand, but the most is fir. It is good timber to buy and a good place to make an investment in timber land, and is chiefly valuable for timber. It is good timber and would be best. He is pretty well acquainted around Saginaw, which is on the railroad. The land that he knows around Saginaw is about a mile and a half or two miles east and northeast from Saginaw and is timber land. His eighty that he owned near Cottage Grove is in Section 25, township 20 south, range 4 west, near a place called West Veatch about, three miles straight west from Cottage Grove on railroad land. It was timber and was a little

ash timber and he has owned it about twelve years. It was railroad land, because he had to send $93.00 to the Railroad Company when he bought, as the land was under contract at that time and he made the last payment. The Railroad Company had this contract with Hamilton Veatch. The other railroad land that he wanted to buy, was a forty just west of that. He had the north half of the northeast quarter of section 25 and he wanted to buy a forty that adjoined that on the south but did not offer the Company any price because he did not know what the price was. This was about fourteen years ago. This forty was principally timber land. A man by the name of F. F. Miller bought it from the Railroad Company and there is a house on it now. He bought it about six or eight years ago. Wendling is on a branch of the Mohawk about twenty-two miles from Eugene and the country is a little rolling. It is good timber, pretty good timber there; around Wendling there are farms here and there, where the timber comes down, but not above Wendling any more, not since they logged. There are no farms on this timber land in the timber, it is just wild timber. The land is chiefly valuable for the timber, but if it is cleared off it is good for farming too. If he had to hire the land cleared and blow out all the stumps it would cost him $75.00 an acre, maybe $50, maybe $75. The heaviest timber where the stumps are eight or ten feet through at the butt might cost him a little more. He believes he could clear that land if they would give him a contract for $75.00 and the heaviest for $100.00 an acre. The big trees on this land average from a foot and

a half up to five feet. In the best timber there are some fifteen, twenty and thirty trees per acre, but he does not think there are one hundred trees on any acre. Not many of these trees are six feet through, but there are some. He has never grubbed out any stumps that large or blown them out with powder, he has grubbed out oak grubs a little but not any big trees, and there is a whole lot of roots under the ground in these lands and one could not plow it, without taking these roots out. They logged off some lands in section 21 on the McKenzie, right across from Deerhorn Postoffice, and burned the logs and seeded the land down; this hay that he spoke of was on this logged off land; there must have been 120 acres, possibly 160 of timothy and orchard grass which was used for pasturage. They did not pretend to mow the hay, the hay was growing in the stumps and there were fifteen or twenty stumps to the acre. This land was logged off by the Booth-Kelly Lumber Company, who bought the timber from another party and had a certain time in which to log it off in section 21, and that in sections 22 and 27 belonged to the Booth-Kelly Lumber Company. He has never tried to make a living on 160 acres of this timber land, but tried to make a living on his eighty, which is on a bench. Cottage Grove is one of the oldest settled portions of the Willamette Valley and the land around Cottage Grove, he understands, was taken up as donation land claims and there is a donation land claim close to the railroad section that he is in. He has been told that that donation was taken under the law of 1850—they all took it up around there at that time. He has a

place on the Coast Fork close to the river of 108 acres which he bought. He does not know whether it is railroad land, but believes that it is part of a donation claim. It is on the Coast Fork of the Willamette River and is comparatively level land, about half of it is timber, what is on it, is saw timber, but there is not enough of it to sell the logs. There is just enough on it for family use for generations to come. There is about 45 acres under cultivation which he rents. It is used for raising wheat and oats and potatoes. He did not exactly cruise for Booth-Kelly Lumber Company, but that company had him run out their lines where he got the timber out and one thing and another. He first owned his eighty acres, and when he got pretty good wages from the Booth-Kelly Lumber Company he sold it and moved his family to the timber with him. He sold that eighty about twelve years ago for $750.00 and since that time he and his family had been living out in the timber at the mills of the Booth-Kelly Lumber Company, for whom he had been foreman since he left his farm, until he quit.

Whereupon on redirect examination witness testified that after the timber is taken off of these lands he could make it good plow land, a good home. The ordinary settler does not hire people to take out the stumps in clearing land, they go at it in a different way, space by space, clearing an acre a year and another acre or two or three and keep on that way—that is the way. They cannot spend $200.00 or $300.00 or $1,000 a year. It is pretty hard to start, but it is better than any other thing and a man can go out and make a living and by

and by a nice living. He is not working now for the Booth-Kelly Lumber Company; he left its employ July 4th last. He is living in Cottage Grove now, where he has his home, and he believes he is going back on the place some of these days and farm—that is on his place over on the Coast Fork. If a person grubs land and grubs it down ten inches below the top that is sufficient to farm. The Booth-Kelly Lumber Company have been asked a few times to sell some of their logged off land, but as far as he understands, it is not for sale. Some one wanted to buy 80 acres and they would not sell. People cannot get hold of these lands, and cannot buy them. It is not for sale. He heard that Booth-Kelly Lumber Company did not want to be bothered with a small tract of land to sell, that is, they wanted to keep it one way or the other. It would injure them if they logged off 80 acres in front or 160 acres and some one got farther back, it would injure them to log through. They do not want to sell now or until further on. If they would sell now, supposing they would make a cattle ranch out of it as they thought at first, there would be cattle in there at Saginaw and if they would do that it would spoil their ranch. If they want cattle range, they want a great big portion of land in one piece—that has had something to do with it. He does not think they have to sell and he does not really know whether they do not want to sell isolated tracts because they would have to haul their logs across it.

Whereupon witness further testified.

Q. About how many quarter sections of this railroad

land and Booth-Kelly land, of this same general kind that you have spoken of, do you know of, that in your judgment would support a family if properly farmed? About how many quarter sections do you think you know of down in that country, of the railroad land and the Booth-Kelly land, that would support a family if properly farmed?

A. Well, really, as far as I went over it, I never found anything yet that four families couldn't make a living on a section of land. I never found it yet, outside of those pinnacles there on the top of the high mountain. I went over a whole lot of sections. I went in Saginaw and in Wendling, and in Fall Creek, and I went over a good many sections of land, and I never found it yet. I was out last week from Cottage Grove, on section 1, and we found a space up there of several acres, right on the top, with a flat ash swamp on it, fine black ground. And there is what I found on section 27. I looked over some timber, wanted to buy it from Booth-Kelly, on section 27, on the left hand side. I found there was a nice swamp up there, too—leaf grass about that high (illustrating), black ground, ash, and maple, and things through it. You find most in every quarter section, you find some springs and some good land. That part, the land is all right—a person can make a living on that.

Whereupon O. J. LAWRENCE, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Zion, Lane County, Oregon, and has lived there six years; prior to that, he lived for fifteen

years at Aberdeen, on Grays Harbor, Washington, and prior to that, in North Dakota, near Bismarck. He was brought up on a farm. While at Grays Harbor he was in a logging community, but he was engaged in the mercantile business. There was very little farming—just little truck patches here and there at Aberdeen. He observed the uses that could be made of logged off timber land while at Grays Harbor—saw quite a bit of it, and also has considered the subject since he has been a resident of Lane County. He is familitr with a part of the lands in Lane County. In the particular section where he lives, he was deputy assessor last year, and had to do with assessing the timber lands in certain townships, and went over them, while discharging his duties as deputy assessor. He became quite familiar with four townships while so engaged. He is familiar, in a general way, with the lands surrounding these four townships, and has hunted more or less there. The four townships to which he refers are townships 19 and 20 south, 1 west, and township 18 south, 1 east and 1 west. During this time, and in the manner mentioned, he became familiar with and assessed railroad lands in these townships. In township 20 south, 1 west, he presumes that nearly one-half are railroad lands, and very little railroad land in township 19 south, 1 west. He does not know anything about railroad lands in 18 south, 1 east. He has seen some of these lands that have been sold by the railroad company in that general vicinity. He has examined some of the lands owned by Booth-Kelly Lumber Company in these townships, that is, in 19 south, 1 west; that is, he knows

they sold a section there at one time, which is a part of the old wagon road grant on the middle fork of the Willamette. His observation has extended into the so-called foothills of the Cascades there. He is familiar with the lands which have standing timber upon them, and also the logged off lands, and has made an observation as to the value of these lands for agricultural or horticultural use after being logged off.

Q. I will ask you to state whether, in your judgment, lands in the vicinity that you have described, including not only the railroad lands but the intervening even numbered sections and lands that have been sold, can be used for agricultural or horticultural purposes after the timber has been logged off?

A. They can.

Q. I will ask you to state what is your judgment as to whether a quarter section of that land is capable of maintaining a family by subjecting it to agricultural and horticultural use?

A. I think it would be very difficult to find, in that territory that I have gone over, a single quarter section that would not support a family. I know of one such quarter section, and that is the only one that I ever observed there. That is just broken rock. It has quite a bit of timber on it, but there isn't any farming land on it.

Q. What township is that in, if you remember?

A. That is in township 20 South, 1 West. It is a part of section 2.

Q. Your full name is Orange A. Lawrence, is it not?

A. Yes, sir.

Whereupon witness testified that he applied to the railroad company to purchase the northeast quarter of Section 17, township 20 south, range 1 west, of these unsold railroad lands, and he examined the land before he applied to purchase it. It is a very fine piece of land.

Q. Is that land of such a character that it could be settled upon, and improved, and cultivated so as to support a family?

A. Yes, sir, it is very fine, a very fine piece of land. It has one table-land on it of about 40 acres, that is covered with timber, of course, very good timber, but it is fine land. It would make just the finest kind of a place after the timber was removed; and it has nice running water on it, and the soil will grow anything there that a person would want to raise there—splendid grass and all kinds of berries, and plums and apples do finely on all of that land.

Q. State whether or not you applied to purchase that land intending to settle upon it and make a home of it.

A. Yes, sir, that was my intention.

Q. From your knowledge of the character of the land and its value for agricultural and horticultural use, would you be willing to take it without the timber?

A. Well, I would if I were a younger man; but,

of, course, at my age I think I might trade it to my young brother, and let him work at it.

Q. But would it be valuable for a home with the timber removed?

A. I think it would.

Whereupon witness testified that he had made experiments to test the value of that land for the purpose of growing fruit, berries, and other farm products, and had some very fine fruit that he raised this year. He has never raised very many berries. They raise currants, which do very nicely. His neighbors raise all berries, and they cannot be exceeded as far as he has seen anywhere. When he first came onto the place he grubbed out six acres and set out apple and cherry trees, and a few other varieties, but of those he has seven hundred trees, apples and cherries, mostly apples, and they have all done very nicely. They commenced to bear this last year, and the quality of the fruit, he has never seen any better anywhere. They traded for a place when they went out there, and it was on that place, because he had a few acres opened up on it; and he traded some merchandise stock for this place in section 4, township 20 south, range 1 west. There are many other persons in that same township who have applied to purchase lands from the railroad company. He is one of the interveners and cross-complainants in this suit, represented by Mr. Lafferty, his attorney. The land he has applied to purchase is described in the bill of complaint as the northeast quarter of section 17, township 20 south, range 1 west. He has

become acquainted, since living in that general vicinity, with other lands in a general way, outside of these four townships, and is quite familiar with the farming lands. He is twenty-five miles from Eugene, and he always drives over to the county seat, and he always compares in his mind the two classes—timber lands and farming lands, and their relative values. They raise up there—on lands that have been farmed twenty years, on high hill land, as high as five tons of hay to the acre, and he has never seen anything like that down in the valley. He refers to township 20. His neighbor raised hay that went five tons to the acre, vetch and oats. The quarter section he applied to purchase is in the same township and the same kind of land. He has given thought and study and has had experience upon the subject of removing stumps —clearing land for cultivation after it is logged off. He did that the first season he was there—employed a man and cleared six acres. If it were gone at, at the right time of the year, and in the right way, with proper appliances, the land could be cleared for $40 to $50 an acre, by the char-pitting method. It might be sometimes advisable to use a little dynamite to give the fire a chance to get under the stump, to have a stick of dynamite to make a hole with, and the fire will do all the rest of the work. A stump fired in that way improves the land very much. He felled a tree in his field there and burned the log, and at least twice as much hay grew where that log was burned—a great deal higher hay grew there than on the other land around it, and places where the stumps are burned out could be used just the same. The finest kind

of grass grows there, and a tree can be set out there and it will do very nicely. If one does not burn it, the tree will very likely die, that is, if you do not use any fire there the ground seems to lack heat or something that the fire supplies, and anything grows right there.

Q. Even after these lands were logged off, and somebody else got the value of the timber, would they or would they not still be valuable for purposes of settlement, making a home, cultivation, and supporting a family?

A. I regard all of that land as having a great future. I have studied along that line quite a good deal, and I think it has a very great future. I think it will be very much more valuable for agricultural purposes, considering all the advantages that it has—plenty of good water every place pretty nearly; and the soil is fertile, and there is quite enough of it that can be plowed for to maintain a family, and the rest of it is all good grazing land, and I think it has a great future and is very valuable.

Whereupon witness testified that it would be necessary to remove the timber from this heavily timbered land before it could be used for agricultural or horticulural purposes. The trees will do very little good in timber, and it must be removed, and they must have sunshine before any real growth can be had—referring to grain, berries and fruit. Grass will grow in the timber, but will grow a good deal better where the timber is removed. Stumps don't make any difference—it grows just as

well.

Whereupon on cross examination witness testified that he applied, through Mr. Lafferty, to purchase the northeast quarter of section 17, township 20 south, range 1 west. They went to the railroad office and told them that they desired to buy that particular tract of land, as he had settled on it, and made, as they regarded it, the necessary improvements, and they tendered them the money, $400, with whatever taxes might be coming to them, and tendered the gold. He did not sign any written tender prepared by Mr. Lafferty, or some timber locator, but went in person with his money, and made the tender to a person who seemed to be the head bookkeeper of the office. This was approximately three or four years ago. He had built two cabins on this land, in the woods. In building these cabins he put up a frame and split out cedar shakes, and covered them in that way. He did not hew it out of the split timber, but peeled the young trees, which makes a very nice frame. He moved into the cabin and was there until he broke his leg, when he had to quit for awhile. He lived in the cabin something like six months. His family was there occasionally. He did not sleep there all the time, just there part of the time, off and on. He had the other place he was keeping up, in section 4, about a mile from this place for which he had made application. He traded for the land in section 4, consisting of 160 acres of timber land, and paid what they called $2500 in merchandise. It had a few acres cleared and an old house on it. The land had been taken a long time before, but he does not know how

it was entered, but supposes under the homestead act. He does not know whether it was a donation or not. His neighbor, David C. Matthews, told him that that part around there had been settled thirty-five years. The closest place to railroad from this place would be Goshen, seventeen miles away.

Q. How did you come to pick out this northeast quarter of section 17, Township 20 South, Range 1 West?

A. Well, I had looked around a good deal through the woods, and that is pretty level land?

Q. Well, didn't you pick it out because it had fine merchantable timber on it?

A. Well, of course, the merchantable timber would help to prepare it for a farm. I suppose that is a consideration.

Q. Now, Mr. Lawrence, don't you tell the court that the fact is you selected that quarter section because it was one of the best quarter sections of timber-land there were in that country?

A. No, sir.

Q. Isn't it, as a matter of fact, the best quarter section of timber in that neighborhood?

A. No, sir.

Q. It is about as good as any, isn't it?

A. No, sir.

Q. Well, why didn't you pick out one that was bet-

ter?

A. This one was right handy, and it is good farming land.

Q. But it was good timber, wasn't it?

A. Very good.

Q. Did you have a cruise on it?

A. No, sir, never had a cruise.

Q. Did you know what the county's cruise on it was?

A. No, sir.

Q. What is the county's cruise on that quarter section?

A. They never gave me time to cruise it, but they said to go over it and report in a general way about what it was worth.

Q. How many thousand feet, board measure, per acre is there on that quarter section?

A. Oh, I would have to approximate that.

Q. Well, approximate it?

A. Well, there is forty or fifty thousand.

Q. Per acre?

A. Yes, sir.

Q. Well, that would make it a good valuable quarter section of timber-land, wouldn't it?

A. Very good.

Q. What is it actually worth today as timber-land?

A. Well, I am offered claims that adjoin it for $3,000 a quarter.

Q. It was actually worth $3,000 for the timber that was on it when you applied to purchase it, wasn't it?

A. That would be my judgment, although we didn't have to pay so much as that.

Q. Didn't you really select that, Mr. Lawrence, because it was good timber-land?

A. Well, if there had been just that land there, and one that had no timber on it with equal soil, of course, I would have taken the farm land.

Q. Yes, I know, but it was covered with timber. You took it primarily for the timber, didn't you?

A. No, sir.

Q. You never expected to clear that land yourself, did you?

A. Well, I expected to hire it cleared.

Q. How old are you?

A. 54 years old.

Q. And did you expect to go there, and take your family, and clear an acre a year, and make a living?

A. Oh, no, I didn't have to do that.

Q. Now, isn't it actually the fact that you applied to purchase that because it was valuable for timber now —right now?

A. No. If it hadn't been valuable for farming land, I should not have been interested in it.

Q. Well, wouldn't you have paid $2.50 an acre for it for the timber that was on it, and never expect to live on it?

A. Oh, yes, I would at that time.

Q. Yes, and wouldn't you have been glad, and thought you had made about $2600, if you could have got it?

A. I certainly would have been glad, because I could have sold it for more than that.

Q. More than $2600?

A. More than $2.50 an acre.

Q. Well, you know that it was worth at that time $3,000 for the timber that was on it, don't you?

A. Well, I don't know about that. They were buying timber at $1600.

Q. I understand; but you don't want the court to understand that you wanted that for a home for yourself at once?

A. That is what I wanted it for. That is, I might not always want to live there, but I thought it was capable of making a great property.

Q. Yes.

A. And I had means so that I could hire the development done, and if I didn't live there all the time, I could have a place, a beautiful place, to go when I want-

ed to.

Q. You were advised by Mr. Lafferty that it was necessary for you to go out there and build your cabin, and live there awhile?

A. No, we did all that before we ever knew about Mr. Lafferty.

Q. Who advised you to do that?

A. Why, I advised my neighbors that we had better all do it.

Q. What was the idea?

A. Well, that is what the law required, as I understood it.

Q. You had to make some kind of a settlement?

A. Yes.

Q. How long were you going to keep that settlement up?

A. Well, we hadn't decided on that point.

Q. Just so you made a settlement of five or six months—then you expected to go away and leave it?

A. Oh, no. We hoped that we would receive such encouragement as would lead us to make all the improvements that the land ought to have.

Q. How long since you lived in your house that is on there—that cabin?

A. Oh, I haven't lived there steadily since I broke my leg. That is two years ago.

Q. Have you lived there at all since that time?

A. I have been there, and stayed there.

Q. How many nights have you stayed there?

A. I don't remember.

Q. As a matter of fact, Mr. Lawrence, you have not been there within two years and stayed over night on that place, have you?

A. Yes, sir, I have.

Q. One night?

A. I have been more than one night.

Q. Did you sleep in the cabin?

A. Yes.

Q. What have you got in the cabin that you slept on?

A. I have got a bed.

Q. A bedstead?

A. Certainly. Spring bedstead, mattress.

Q. Did your wife go there and stay with you?

A. No, sir.

Q. You would just go and stay by yourself?

A. Well, my girl was there awhile—we stayed.

Q. How long—two or three nights?

A. We didn't stay very long.

Q. How much did you have cleared there around that cabin?

A. I had very little.

Q. What did you plant on that land, if anything?

A. I planted some garden stuff.

Q. What was it?

A. Radishes and onions, and planted some trees.

Q. What became of the trees? Are they growing yet?

A. They are growing yet today.

Q. You didn't put out any fire though, to plant them in, did you?

A. Well, I burned a little around there.

Q. You had to burn this soil before it would support a tree, didn't you?

A. Well, they didn't do very good, because I didn't have fire enough—I hadn't burned enough to make it do good.

Q. And the tree didn't really do any good, did it?

A. The trees have not done very well, because they have not had sunshine enough.

Q. Now, your onions and lettuce, and stuff of that kind—just a little of that, wasn't there?

A. Yes, there wasn't very much.

Q. Just about like they would do on these homesteads, where they take them out in the mountains for the timber that is on them?

A. Something like that.

Q. Now, this soil that you speak of being such fine soil—it has to be burned over once so as to give life to it, doesn't it?

A. Well, I don't know about that. Of course, if you remove the timber it gets the sunshine, and the sunshine will produce vegetation.

Q. I understood you to say in your direct examination, that this land would not produce, would not support a tree—I mean an apple tree or a domestic tree, a fruit-growing tree—until after it was burned over?

A. Well, that, I referred particularly to where the tree stands. That ground under the tree is packed hard, and nothing else does well on that place, that particular place where the tree stands, until it had either sunshine or fire.

Whereupon witness testified that he had lived in the vicinity of these lands a little over six years, and these lands are considered pretty heavily timbered as compared with the other lands in Lane County. These lands have never been cruised by the county. He got the amount of timber on these quarter sections for the purposes of assessment when he went over them. He is a pretty good judge of timber—and has been buying and selling it for fifteen years. He made no segregation of the character of the land as to being agricultural, timber, or otherwise, but just estimated the value of the property. One would have to consider the land as well as the amount of timber, and he did put a value on that land for its agricultural purposes, but did not segregate the two values, but

had them in mind, that is, its agricultural possibilities and its timber. He never assessed logged off lands, and does not know that the timber was the principal element upon which the county was assessing the property.

Q. Now, you say that these logged off lands, you think, could be cleared for $50 an acre?

A. $50 an acre?

Q. Yes.

A. Yes, sir, I am hiring it cleared today for $40.

Q. What kind of land?

A. Heavy timbered land.

Q. Where is it?

A. Section 4.

Q. How many thousand feet of timber did that land carry before it was logged off?

A. Oh, it will carry 50,000 to the acre.

Q. And do you take the stumps out?

A. Everything has to be taken out ready for the plow, and fenced, at $40 an acre.

Q. How deep do you take the roots out?

A. Well, down so the plow won't hit them—about eight or ten inches.

Q. Well, then, when Mr. Booth testified that these lands would cost from $50 to $500 an acre to clear, your judgment differs from his?

A. I don't think he was well informed.

Q. You know Mr. Booth, don't you?

A. No, sir.

Q. R. A. Booth, of Booth-Kelly Lumber Company?

A. I have heard of him. I don't know him.

Q. These other people that you say have made applications to purchase in this same township, who are they?

A. Well, there is R. G. Balderee, and Lake, and there were two or three Smiths, and Mr. J. F. Holbrook.

Q. All in timbered land?

A. Yes, it is all more or less timbered.

Q. And they are all intervenors in this suit, all of you represented by Mr. Lafferty?

A. Yes, sir.

Q. And all made your applications to purchase, and offered $2.50 an acre, in the same way?

A. So far as I know, that was the way it was done.

Q. And all made little shacks on the place out there, and made a pretense of living in them for a while?

A. Oh, they lived—I know they lived very continuously on that land for a long time, some of them did.

Q. Are they still living there?

A. Oh, no, of course, they had to go out where they could school their children.

Q. Had to go out where they could make a living, hadn't they?

A. Oh, they could have made a living there—they have been.

Q. What can they do to make a living there? Just tell us.

A. They can raise cattle and sheep, and they can raise fruit, and it has been done there for thirty-five years, and they are still living there.

Q. Do you mean to tell this court a man could raise cattle and sheep on 160 acres of this timber-land, and confine it to that, and not pasture outside?

A. That is what I am doing now.

Q. And make a living.

A. That is what I am doing.

Q. On 160 acres of this land?

A. Yes, sir.

Q. Before the timber is removed?

A. Yes, sir. Plenty of pasture in the woods.

Q. How many head of cattle can you pasture on 160 acres of timber-land.

A. You can keep 20 to 30 head very nicely.

Q. Where would you get your hay to feed them in the winter-time?

A. You don't need very much.

Q. Where would you get what you would need?

A. You can always find little places that you could raise all the hay you would require for your milk cows, and the others do just as well if they are not fed.

Q. Do you mean to say to the court that a man could take 160 acres of this timber-land, fence it, and have twenty or thirty head of milk cows on that 160 acres, make a living in that way, and that they would be supported on this place?

A. I wouldn't say all milk cows, but I say twenty or thirty head of cattle. Let there be milk cows enough for the family, and the young cattle get along very nicely. The milk cows would need some roots, or something like that, to do much good.

Q. Yes. You haven't done anything of that kind with this 160 acres that you applied to purchase, have you?

A. Why, my cattle run on it a good deal.

Q. It is unfenced, isn't it?

A. No, sir, it is not fenced.

Q. That is what I mean. They rove over the whole country there, don't they?

A. Well, yes, they go where they please.

Q. They live on pea-vine, and whatever there is growing there in these mountains?

A. Lots of pea-vine and grass. There is just lots of all kinds of good food.

RE-DIRECT EXAMINATION.

Q. When you made your application to purchase this land from the railroad company, did you receive any encouragement of any kind from the railroad company?

A. We didn't—I didn't receive any particular encouragement, unless—I don't know—not any verbal encouragement. Of course, I observed their doings a good deal, and kind of figured on my chances and so on, but I don't think they gave me very much encouragement.

Q. Did you ever receive any notice of any kind from them after making your application to purchase?

A. No, sir.

Q. Did you know, or did you not know that the railroad company denied your right to purchase the land in that manner?

A. I don't know whether they objected to it or not. They didn't do it anyway.

Q. Well, now, if they had accpted your application and sold you the land, and conveyed it to you, could you have sold the timber and cleared the land, and subjected it to cultivation?

A. Why, most certainly.

Q. Well, then, when Mr. Fenton asked you what you could do with that land with the timber on, I will ask you what you could do with it if the land was conveyed to you and you had the right to remove the timber? Would that make any difference?

A. Indeed it would.

Q. How about the even numbered sections in that township 20 South, Range 1 West? Are there any settlements on them?

A. Yes, sir.

Q. How old are they?

A. Thirty years—twenty or thirty years.

Q. People living there?

A. Yes, sir.

Q. With their families?

A. Yes, sir.

Q. What are they doing?

A. They are raising hay and stock and fruit, and making very comfortable livings.

Q. Any reason that you know of why the same thing could not be done on the adjoining odd sections, held by the railroad company?

A. I see the land all just the same. Now, up in section 32 it is very high—section 32, Township 20 South, Range 1 West, is a very high point of land—and a German family by the name of Kloster went there something like thirty-five years ago. It was all heavy timber, and they settled up on that high land. There is a nice little bench up there—it is rolling—and they lived there until a year or two ago. The hill was so high that—the lady is a cripple, and she didn't like to walk up and down the hill; but you can see all of that

Lost Creek River basin from there—you can get just as nice a view as you can from some of those high peaks; and they have always raised the finest fruit up there, the quality is unsurpassed any place I have ever examined it; and the hay this year, they raised three or four tons to the acre. I was through it in June—it is a very rank growth. And it is clay soil, and just like all of the hill land around there.

Q. From your knowledge of that general country in there, Mr. Lawrence, I will ask you whether, in your judgment, the best way of developing that country is to sell it in large blocks to large timber companies, and use it simply for the taking off of trees, and then when the trees are removed to reforest it, and permanently withhold it from cultivation? I will ask you whether that is the best use that can be made of that land, having in mind the development and settlement of the country, from your knowledge of the general nature of the soil, and all of the conditions that enter into the question?

A. Why, from what I know of the country and its possibilities, from what I have seen done there, I know that, in my judgment, the best way would be to let people have it that will make homes of it and develop it; and some of the very most beautiful homes in Lane County will be up in that part of the country. I have been of that mind for quite a good many years, and have told my neighbors that.

Q. Now, did the refusal of the company to sell

this land and convey it to you in any way influence your action in making further improvements upon the land?

A. No, sir. I just kept up the improvements just the same. I hoped that they would change their mind or something; if they had it under consideration, that they would finally give us the land.

Q. Well, suppose that the railroad company had accepted your application and sold you the land, and conveyed it to you at the time you applied to purchase it, what would you have done with the land?

A. Well, I had it in my mind to make a beautiful place of it, a valuable place, as all of those places can be made valuable, and the timber there would help to do that; it would clear the land, probably, and make it quite easy to make a fine place.

Q. Well, why didn't you do that?

A. Why, I didn't understand that we would be allowed to cut very much of the timber. I understand that they had been stopped from doing that. In fact, one of the gentlemen that took one of these claims was ordered to get off the land by the railroad's attorney; and they sent a man up there to see what he had actually cut off; and we didn't want to go too far. We thought we showed good intention by doing what we did. And the trail—to get a good road into those claims, some of them, is a matter of quite a good deal of work; and I have got a road that you can go over with an automobile to my cabin. Perhaps I would have to remove a few

trees—they are always falling across the trail; we would have to get them out every month or two. With that exception, you could go right today to my cabin with an automobile.

Q. I will ask you whether, in your judgment, these lands would have been settled, cleared, improved, and reduced to cultivation, and made homes of, if the railroad company had sold them to settlers who applied to purchase them?

Mr. Fenton: Defendants object to that as something the witness could not possibly know, and as a mere surmise on his part.

A. Well, I have lived in seventeen states—I have lived in North Dakota, and I have seen what people had to do there to make a living, and the disadvantages they have to contend with; and when I think of that, and places where people do live and get along, I think that they certainly would be very well off if they could have a chance to make homes in there, and they would appreciate it so much that it would be taken up in a day, if it were known, that land for the purpose of making homes.

RE-CROSS EXAMINATION.

Q. Mr. Lawrence, I show you two photographs, "Defendants' Exhibit 270," purporting to show a photograph of your cabin on the northeast quarter of section 17, Township 20 South, Range 1 West, looking north, and a like photograph looking northeast, and will ask

you to state whether those are fairly good protographs of those cabins as they were on the 15th day of May, 1908, four years ago?

A. Is this representing the same cabin?

Q. Yes, same cabin, different view.

A. That is a fairly good view. That is my best cabin. I have got one that ain't quite so good as that.

Q. On the same place?

A. Yes, sir.

Q. What was the idea of building two cabins?

A. Well, the other one is built on the best land, but I had to go across a big gulch to get there, and I didn't take time to make a road to get across there.

Q. How far away from this cabin?

A. It is more than a quarter of a mile.

Q. Did you furnish both cabins in the way that you speak of having furnished?

A. Well, I furnished the other one, and then I removed the contents over to this one.

Q. There is where you intended to make your home, in this cabin?

A. Yes, sir, this is where I intended to make a home for awhile, anyway.

Q. Do you see any place there where an automobile could travel in front of that cabin, or around there, to get to that?

A. Well, here is a little kind of bad hill there; but right up on top of that hill there is a good road. Of course, it would be a little difficult right in here for a hundred yards.

Q. You notice that picture shows some fine timber just behind the cabin, doesn't it?

A. No, it is poor timber.

Q. I mean it is heavily timbered?

A. Oh, it is a lot of brush there.

Q. Did you locate that on this good agricultural land that you speak of? Is that the place?

A. No, I just built that cabin there for convenience, but the other cabin was located on the choice land.

Q. Well, how did you come to put this over there? There is where you wanted your garden, and your settlement, and your improvements?

A. Well, there is a good place right behind there, that could be easily cleared out there—that brush there.

Q. How far back?

A. There is five or six acres there that could be nicely cleared out, and make a nice little place for fruit.

Q. Where did you plant your tree and your onions?

A. Over where the other cabin was.

Q. You didn't plant any here, did you?

A. I planted a little garden there, but it didn't do

much.

Q. I wish you would take a pencil, and mark out with a cross there where you made your garden, on this photograph.

A. You can't see it here.

Q. As a matter of fact, you cannot see that human hand has ever stuck a spade or a hoe or anything else in the ground there, can you?

A. Well, you might not be able to see it, but I can see where I have dug ground.

Q. Just put a cross there where you have dug around for garden purposes.

A. I have dug around here in front of the house, down below here. You cannot see it, but it is down below this pitch here.

Q. Just mark out in front of the house where you have attempted to make any garden.

A. There is a little place right in there. You cannot see it on this picture.

Q. In front of the house.

A. Yes, there is a place burned off there.

Q. How big a space is it?

A. It is not large, but I just had a little garden there.

Q. Was it as much as a foot square?

A. Oh, it was half as big as this room.

Q. You say there was a space in front of that cabin half as big as this room, which is about 20x30 feet, where you planted any garden in front of that cabin?

A. Yes, sir.

Q. When did you plant it? What year?

A. Now, I wouldn't be certain about that. I think it was the first year I took it.

Q. What year was that?

A. Three or four years ago.

Q. Wasn't it in May, 1908, that you made your application to purchase?

A. I wouldn't be certain without referring to the papers.

Mr. Townsend: The complaint shows the suit was filed April 7, 1908.

Q. You filed your suit immediately after you made your application to purchase, didn't you?

A. I believe it was filed soon after.

Q. Yes, and you built your cabin just before you filed your suit?

A. Quite a little bit before.

Q. Well, six weeks before?

A. Something like that.

Q. And you had made your garden just before?

A. Oh, I don't know. I think the garden was made later than that. We had to do quite a bit of burn-

ing there to expect to receive any returns on our labors.

Q. Why did you have to burn?

A. Why, it is all brush. You try to open up that land, and you will have more brush covering the ground. You have got to get rid of that brush.

Q. What is the elevation of this place where this garden is?

A. Well, now, I would have to guess at that. I would say it was a thousand feet above the level of the sea.

Q. What is the nearest stream?

A. There is a little creek down there a couple of hundred yards, or a hundred yards from the cabin. Lost Creek is the nearest logging stream.

Q. How far away is that?

A. It is a little over a mile.

Q. Can you log from these premises to this creek?

A. Why, yes, the grade is very favorable for logging.

Q. And you took that into consideration when you took this land, did you?

A. Oh, that was all talked up to me when they sold me the land.

Q. Who sold you the land?

A. Mr. William Whitney.

Q. Who is William Whitney?

A. He is the gentleman that lived on the place.

Q. Well, I mean this quarter section—this railroad land?

A. Oh, I thought you meant the other.

Q. No, this railroad quarter section is favorable so it could be logged to Lost Creek?

A. That whole tract in there is quite favorable for logging.

Q. You considered that when you made the selection of this quarter section, didn't you?

A. No, I never thought of it.

Q. Didn't enter your mind at all?

A. No, I don't know that it did in particular.

Q. Well, did it in general?

A. Oh, if I thought about it at all, I would have thought that whole country there, that the whole basin is quite favorably located for logging.

Q. And you knew that when you made your application to purchase?

A. Well, if I had thought about it, of course I would have known it.

Q. Didn't you think about it?

A. Never gave it any particular consideration. I wasn't thinking about that.

Q. You were not thinking about the timber on this land at all?

A. Oh, that was a valuable asset to clear the land,

to make it a home. Of course, I would have to think about it.

Q. You thought about it a good deal, didn't you?

A. Well, I thought about it some.

Q. Just name the seventeen states that you have lived in, Mr. Lawrence.

A. I was born in New York state. My people moved to Wisconsin, and lived in North Dakota, lived in Ohio, and we lived in Indiana. I didn't live very long in some of those places. I peddled, and when I peddled I lived in the states when I was in them. I have not had a home in seventeen states, but I have been in that many in that way.

Q. I understood you to say, in answer to counsel's question, you had lived in seventeen states?

A. I meant by going through the states, I had.

Q. You had a home in eight or ten, hadn't you?

A. I have had a home in New York, Wisconsin, North Dakota, Minnesota, Montana, Washington and Oregon.

Q. And have you followed the mercantile business all that time?

A. No, sir, I used to teach school, used to peddle, kept books; did a little of everything.

Q. What have you been doing in Lane County the last six years?

A. Farming.

Q. On this piece of land in section 4?

A. Farming and buying and selling timber.

Q. I mean this section 4?

A. Oh, I improve all of that property as fast as I can.

Whereupon witness testified that he had been buying and selling timber in Lane County in a small way—didn't have much means. He bought a section of Booth-Kelly Lumber Company, part of it was timber, in section 25, township 11, range 1 west, which he has yet. It is not logged off, and part of it is pretty good timber, and it is in logging territory. He paid $4000.00 for it—does not know why the Booth-Kelly Lumber Company sold it. It is good saw timber. One-half of the section has been burned off. What timber there is, is good saw timber. He did not buy the land for the timber, but thought about its farming possibilities whenever he would go over it. It is very fine. The timbered half of it would have a stand of 50,000 feet to the acre. He offered it for $1.50 per thousand, but could not find any buyers. He had an offer of a dollar, which would make $50 an acre. He paid $4,000 for the section, and was offered $1.00 a thousand for the timber land, which would go 50,000 feet to the acre, and he wanted $1.50 per thousand. It could be logged off. He had another claim there and was offered $20,000 for the 800 acres, but he does not know what purpose the gentleman had in mind. That half section that he said was burned off is right up on the top of a high mountain, very precipitous,

and there is a man by the name of Tom Malloy who lived up there close to Zion, who had a beautiful place, but no road to get to it, but could raise all kinds of stuff there. The whole half section owned by witness there, which is burned over, is the same kind Malloy left his premises and went where it would not be so hard to get in and out. Malloy could make a good living, but if he raised anything there he could not get it out very well, and would not have any market for it. He could not haul it out very well; he could have fixed the grade all right, but his sister gave him a place on Fall Creek and it was an easier problem for him.

Whereupon on redirect examination, witness testified he bought this section from Booth-Kelly Lumber Company three or four years ago and they gave him a deed, which is recorded. This land is in section 25, township 19 south, range 1 west, and $10.00 is the consideration named in the deed. He did not buy this all for himself, and he does not own it all himself. He told an Eastern friend of his about the matter and that he thought it would be a good thing for them to buy it together, and his friend said to go ahead, if his judgment approved, and have it cruised. He had it cruised and it did not come quite up to his expectations. His judgment was that it was a good buy and he bought it. He has never seen the land, although he and his friend own it together today. He also bought 160 acres in section 24 adjoining this, making 800 acres altogether, for which 800 acres he was offered $20,000 two or three years ago, in a lump sum, and when he says that he was

offered $1.00 a thousand, he means it figured out about $1.00 a thousand. When he said he wanted $1.50 a thousand, he told the party he wanted $30,000 for the tract.

Q. Now, have you understood that the railroad company would prevent the persons who applied to purchase this land, and, for instance your own quarter section in the northeast quarter of section 17, Township 20 South, Range 1 West—would permit you to reduce it to cultivation and remove the timber for that purpose?

A. No, sir, I did not. I certainly thought they would not do it. I thought we would get into trouble, and we had some talk among ourselves about that.

Q. Well, then, does what you have done with reference to that land truthfully represent what you could and would do if the railroad company would convey the land to you, and permit you to subject it to the use to which it is susceptible?

A. Well, of course, there would be an element of risk there, that I would take in going on, and I didn't feel like doing it. I thought I had done enough to show my good intention. If I could get the land, why, I would do all that was required, and make what I thought I could make out of it. I think those places would be worth five times as much when the timber is off, and they are in such a state as they can be put in; and I have investigated this land business quite a bit, and figured on its possibilities, and what they do over in

the Walla Walla country with their lands there, and considered the altitude, and what it was capable of raising. I think that some of those townships there that we have been talking about, particularly Township 20 South, Range 1 West, has got possibilities that are equal to anything that Walla Walla has got for raising wheat for fall sowing. It does not do good for spring sowing; but fall sowing, it is excellent for rye, or wheat, or oats; and part of it is at such an elevation that the snows protect it in winter, and I believe that it will be just a wonderful place.

Whereupon on recross examination witness testified that he has seen the wheat, rye or barley growing on some of these timber lands there. His neighbors have raised them, just little patches here and there of this wheat, oats and rye. They have raised quite a bit of it, something like two or three acres on a place. That was on a piece of ground that was very heavily timbered at one time, but cleared off by some of these people. It grows better on the hills, on the rough lands. These spots are right on the hills. All the land of that German family he mentioned, is of that kind, is apple land and will raise hay and anything there. There is about twenty acres of hay on this German place, right on top of the hill, formerly very heavily timbered—the same as he has. They burned the timber up and did not sell it. The German family have lived there twenty-five years—raised a large family. He thinks they must have taken the land as a homestead in section 32. He does not know whether it was a homestead or donation. They only

tried to clear about forty acres of the 160 that they own. They cleared that forty acres more or less perfectly, and have been about twenty to twenty-five years in clearing the same. There is a man and his wife and six children, who have no trouble to get a living. They raised the stuff on the ground there and have cows and sheep. They did not dare to let their stock go too far over the country. They kept sheep and it was really dangerous to let them go very far on account of cougars, so they confined them to quite a close range to their place, but the cattle went further out, quite a ways. The whole country around there was open and they had access to that range for four or five miles in every direction, but they did not need it for their cattle, and their sheep were kept closer at home under surveillance, and he presumes they went over the land near by. They had twenty or thirty head of sheep, something like that, and sometimes ten or fifteen or twenty head of cattle, and two or three head of horses. He does not think they marketed any produce anywhere. They could have sold butter and milk, but he does not know whether they did or not. They did not sell any cream that he knows of, but they may have done so. Their nearest neighbor before he went in there, was about a mile, and the nearest school house more than a mile, and their nearest post office a mile to a mile and a half, called Zion Post Office, established before he came there, but since has been moved.

Whereupon on redirect examination, witness testified that this land of the German family spoken of, is

in the southeast quarter of section 32 township 20 south, range 1 west, but they have sold all but forty acres of it for timber land to Hyland Brothers.

Whereupon on recross examination witness testified that Hyland Brothers have a saw mill, but he does not know how extensively they manufacture. They own 800 acres of timber land on Lost Creek, and 160 on the Willamette, and have quite a lot over on Fall Creek—he don't know how much.

Whereupon JAMES WHITFORD, called as a witness on behalf of complainant, being duly sworn, testified that he is eighty-three years old; by occupation a timber cruiser; resides at Cottage Grove, and is employed by the Star Lumber Company. He has worked for the Booth-Kelly Lumber Company, and lived in Oregon ten years last spring. He has been in Lane County, and from Columbia County through to Josephine County. He has cruised mostly in Lane County, back and forth, and been engaged in the timber business pretty much all this time. He has never done any farming in this country.

Q. Have you been in farming communities, and are you acquainted with the character of soil of the land that is used for agricultural purposes?

A. Well, I have seen a good deal of land here in the mountains and in different places. It look very fine. I have seen very fine growth—stuff growing.

Referring to Defendants' Exhibit 259, witness testified that he has looked over the lands on the Coast Fork,

some of them pretty closely, and has been on the McKenzie and on Fall Creek. Parties would write to him from Minnesota to look at the lands and he would go and look at them; these lands he refers to were in Lane County. There is no difference between the even and odd sections. As a general thing one is equal to the other, as far as he can see. He has been over township 20 south, 1 and 2 west; 22—3; 23—2 and 3 west, and has a claim in 23—3 west, in section 2. He has been over these lands some. He does not think there is a section there that he has not been over, railroad and all. The land is about the same every place he has been in Oregon. Some places are more broken. Down in Coos it is more broken country, and in the Coast Range it is more broken. He has a general knowledge of these lands in the western part of Lane County, and also of the lands in the eastern part of Lane County. He has been on the McKenzie, but has a more specific knowledge of these lands that he has described by township and range, and was over these lands and the timber for the purpose of making a cruise of the lands. In making a cruise he has always noted the character of the soil, as to its agricultural uses, and made a statement whether it was good land or rocky, whatever it was. That was a part of his duties. Take the lands in these townships right through, as a general thing it would go fifty per cent farm land, if they were cleared and improved. Of course, there are hills, to be sure, but then they could all be worked. The remainder of the land when it approaches the river, that is the high knolls, where the

rocks make an appearance, is grazing; but grass grows on it. That is, the remainder of the fifty per cent would be grazing, in his opinion. He applied to purchase lands from the Railroad Company about five years ago, and wanted to get a quarter section in section 15, township 22, range 3 west, in Lane County, and they said it was not on the market. The percentage mentioned by him would run generally as to all of these lands about which he has testified. He cannot see much difference. One can see where they have settled on the even sections. It is all the same. They have settled on section four and on section two in that township, and there are settlers intermingled on the even sections. He does not think there is any vacant land in that township but what is taken.

Whereupon, on cross examination, witness testified that part of this railroad land that he applied for, was very good timber. There was a nice bottom and flat right there on Wilson Creek, which came down through it. The timber that could be logged on it was about three miles from the river, and they can log that distance, but there was about forty acres of it upon which there was no timber at all scarcely—it was vine maple, and kind of a flat. He cruised this quarter section and called it 4,000,000 feet. That would be a good merchantable quarter section as timber land. It was better than that. He did not make any offer for the land, but only made an application for it, and they reported that it was not on the market. He did not want to buy

it for the timber that was on it—he was going to settle on it. He tried to get a homestead on it one time, but could not get it as a homestead. The reason he did not pick out a quarter section that was all open instead of one that had timber on it, was that he could not get it in his time. All that was open, was taken. Most of the land with which he is acquainted is most all fair timber land. Some of it is better than others. He has never sold any timber, but has been a cruiser of timber lands; cruised for Charles Ladd of Portland, out in North Yamhill, and cruised there for the Carlton Lumber Company above Fairchild's old saw mill, and found some very fine timber up there. George Perkins had a saw mill there, but it is not running now—that mill is all sold out, but he owns a lot more timber in there. The timber land in that section is the best in Oregon. It is fine land after one gets the timber off, but it is now chiefly valuable for its timber. That is the reason he bought some; he bought a lot for Ladd & Tilton, because people could not do anything with it until they got the timber off. The only way to get anything out of it is to cut the timber off. He is now employed by the Star Lumber Company, doing anything that comes along—has been cruising a little. That company has not much timber land. It is in Lane County, in 21-1. He has not done any work for any of these large timber investors in Lane County. He is a man of family, but his family lives in Minnesota; they are all married off. The timber land of the Carlton Lumber Company on the head waters of the North Fork of the Yamhill River

is fine timber—fir and larch, a good deal of it larch, which is called Noble fir. He guesses that the timber lands of Western Oregon, west of the Cascade Mountains, particularly on the western slope of the Cascade Mountains and on the eastern slope of the Coast Range and the western slope of the Coast Range, including Coos, Yamhill, Tillamook, Lane and Douglas Counties, have the finest fir forests anywhere in the country, and that section is known throughout the United States as a timber country. He does not know as it is known altogether as that. They have some good valleys that there is no timber on. Men that were taking timber claims would have him go and look and see if there was any burn, see if they were all right. He does not know of any movement of Minnesota and Wisconsin people in these Oregon lands lately. They have taken timber claims, a good many of them in the timber.

Q. You speak about these settlements on the even sections—most of these settlements are in these timbered lands, aren't they?

A. Yes; but they were mostly settled years ago. One-half of them settled on homesteads.

Q. Most of those were settled by homesteads years ago?

A. Yes.

Q. The cabins have rotted down?

A. No, by gosh, some of them are living on them and making improvements.

Q. I know; but most of them have rotted down?

A. There is lots of them living on them, making a living.

Q. Did you ever see any abandoned claims in there that the timber people have bought up?

A. I have seen timber-claims abandoned, but not very many homesteads.

Q. You have seen some homesteads that the cabins were abandoned, haven't you?

A. Not but very few.

Q. In the timber districts?

A. I have seen a few over on North Yamhill abandoned.

Q. Did you see some in Western Lane County in the Coast Range?

A. No.

Q. See any in Coos?

A. I have been in Coos and been on the Siuslaw and Smith River. I have seen men that lived there for 12 or 14 years on timber claims.

Q. Most of these people that have settlements are on little creeks, are they not?

A. Yes, sir.

Q. And have a little open land, or little bottom land along the creeks?

A. Well, generally; but lots of it is up on the hills;

lots of them right up on the hills.

Whereupon witness testified that the Carlton Lumber Company had about 1600 acres which he estimated as containing 650,000,000 feet; that was a good buying estimate, but it was not a good fair selling estimate. If it was estimated again it would go over that. He cruised it for the buyer and it was proper to cruise it as low as he could conscientiously.

Whereupon N. H. MARTIN, called as a witness on behalf of complainant, being duly sworn testified, that he is forty-seven years old, resides at Cottage Grove and has lived in Oregon practically all his life. He was raised on a farm up to about seventeen years ago. The main part of his life was spent on a farm five miles west of Cottage Grove in Lane County and he is familiar with the farming conditions in Lane County and other parts of Oregon and on the western slope and west of the Cascade Mountains. Referring to "Defendants' Exhibit 259" his actual work in estimating timber has been in Marion, Linn, Lane, Douglas, Josephine and Curry Counties. There is where most of his work has been. He has traveled over other counties on the western slope in a general way but his timber estimating has been in those counties. He has cruised timber in township 8 south, range 1 east, the head waters of Little North Santiam. His work was also in township 8 south, range 4 east right next to the Reserve on the waters of the Little Fork or north tributaries of the Little North Fork of the Santiam. His work in Lane County has been on

the Mohawk, McKenzie River, Willamette and the West Coast Fork, tributaries of the Willamette, Row River, Brumbaugh River and the Coast Fork of the Willamette. His work was scattered over these townships in 19 south, to about 6 west, meaning all the townships in 19 south, 1 west, to range 6 west, inclusive. He has not done actual estimating in all the townships but has traveled over them. He has estimated in township 19, Ranges 1, 2, 3 and 4 West, but has never done any estimating in range 5 and 6 west, but has been over 5 and 6 enough to familiarize himself with the soil and the general conditions of land in those townships. He has had the same experience as in township 19, in townships 20, 21, 22 and as far south as township 26 south to about range 6 west. In 20 south he has been as far over as 10 west, right over on the coast, 8 and 10 west and he has been in practically all of the townships south of that up to 26 south, 5 and 6 west, except 26. He has only been in 2 and 3 west in 26 south and that is as far west as he had been in that township, that is in 2 and 3 west in 26 south, that is he has been in all of the townships from 20 south to 25 south inclusive, ranges 1 to 6 west inclusive, excepting that he expects in township 20 there are ranges 7 and 8 and possibly 6 that his travels have been very limited in and he would not undertake to say that he was familiar with 20 south, ranges 6, 7 and 8 west, but has a very good knowledge of ranges 9 and 10 west. His travels in township 21 were up to range 6 west but no farther. In 22 south the same and in 23, 24 and 25 about the same and also

in 26 ranges 1 and 2 west, and he has been in 20 south ranges 9 and 10 west, that is the only two townships west of 6 that he has had any experience in worth mentioning. He is acquainted in a general way with the lands in townships 20 to 26 south, ranges 7 and 8 west, but not by actual work. He has traveled through some of the country sufficiently to acquaint himself with the general characteristics of the country as to soil and timber growth and its formation. He has traveled along the Siuslaw River from the head to its mouth and on the divide between the Siuslaw and Smith River and some north of the Siuslaw on the divide and he has been in township 20 ranges 7 and 8 west and has traveled the full length practically of the two Umpqua Rivers, the south and the north fork and on the divide between the south and the north fork of the South Umpqua River. He believes the territory that he has gone over does not cover any township south of 26, as near as he can locate it from "Defendants' Exhibit 259." He has not covered any territory south of township 27 south excepting right along the railroad. He has of course traveled on the railroad and on the west fork of Cow Creek and he has been in township 31 south ranges 7 and 8 west and has done some cruising in 31 south 8 west and he has been through the township sufficiently to familiarize himself with the lands in that township and his travels farther south than that have not extended very far from the railroad. The lands just mentioned are those he cruised in Josephine County. The lands on the Santiam that he cruised were in Marion County on the Little

North Fork of the Santiam. The lands that he cruised in that territory would run 30 to 40 per cent agricultural land. The other land that he traveled through going and coming to his work was about the same, as near as he could tell.

Whereupon witness testified:

Q. State as to whether or not, Mr. Martin, a sufficient amount of tillable land existed on each 160-acre tract, described as I have mentioned, that would be sufficient to maintain a man and his family, if he should settle on this land.

A. There is very few quarter sections in that locality but what would support a family.

Q. Now, in the Douglas County lands, in 19 and 26 South, in the ranges that you have mentioned in your testimony that you were acquainted with, what, if any, material difference exists in those lands? That is, are they of the same general character?

A. The character of the land is better in that range than the other, for the simple reason that the climatic conditions are better. It is in a lower altitude. The ground is more of a red soil, but lower altitude; and, with the exception of a few steep hills and small rocky points, it is better on an average than the Little North Fork locality.

Mr. Fenton: Little North Fork of the Santiam, you mean?

A. Yes, sir.

Q. Do those same general soil conditions exist, and climatic conditions exist, as to all the lands that you have mentioned in Douglas County, that you are acquainted with?

A. Practically the same in Lane and Douglas.

Q. What percentage of 160-acre tracts, described in 40-acre subdivisions contiguous, would be susceptible to settlement and the support of a family, of the lands that you have mentioned in Douglas County, in your opinion?

A. You mean 160 acres in 40s?

Q. 160-acre tracts in contiguous 40-acre subdivisions; not by a legal quarter section.

A. Simply adjoining, you mean?

Q. Simply adjoining 40-acre tracts?

A. Well, the sections, of course, vary in the townships. The average will run 25 per cent, or better. In many sections you will find forty acres that every foot of it can be farmed—reasonably smooth—and others you will find steep places, that would be too steep; but on the average, taking the whole range here, it will go better than 25 per cent. But the climatic conditions are better, as I said, than in the Little North Fork of the Santiam territory.

Q. You mean, there would be more than twenty-five per cent of agricultural land?

A. Yes.

Q. Now, what percentage of the 160-acre tracts described the way I have mentioned would support a family, would be suitable for settlement, of these lands in Douglas County, that you have covered by your testimony?

A. You mean, what per cent in the range from 1 to 6 West, of each quarter section?

Q. I mean, what percentage of 160-acre tracts, dividing the land covered in your testimony into 160-acre tracts, what percentage would be suitable for settlement purposes; that is, that a man could go on, and make a living on, as settlers commonly do on lands?

A. Well, there is very few of the 160-acre tracts mentioned in that territory but what could be settled, and would make a living for a family. There would be a few exceptions. While the other 160-acre tracts nearby would run a higher per cent, I estimate that it will all average about thirty or forty per cent. Some will run low and some high.

Q. In speaking of 30 or 40 per cent, you are speaking of the amount of the land that can be cultivated in the quarter section, aren't you?

A. Yes, in each quarter section.

Q. Now, Mr. Martin, upon what do you base your opinion that a family could go on these quarter sections and make a living? State in your own words.

A. For the simple reason that the soil is of good reasonable depth. Some of it is dark, some of it is red

soil, and observations have shown me that it will produce, being settled by people in different localities, growing crops—observation of growing crops and climatic conditions; the fact that a great deal of it is not covered with real heavy timber, and some of it, that that has heavy timber, as a rule has fairly good soil, capable of producing different varieties of crops.

Q. In your travels and in cruising over this land that you have described, did you find settlers or people living and making their homes on any of the lands in the even numbered sections?

A. I have, in a great deal of this territory, found settlers dotted around through the country; not very many in some places, but they would be scattered around. In running the lines in my work, I would unexpectedly come onto a settler up on a ridge, a little home.

Q. Were those settlers confined to land lying contiguous to and along streams?

A. Not altogether. The first settlers were located on the streams, naturally; but others located on the high lands.

Q. You mean the ones that came later, do you, by "the others?"

A. Yes, as a rule.

Q. Now, in this territory that you have covered by your testimony, Mr. Martin, are the lands located along the streams generally taken up?

A. Yes.

Q. By the early settlers?

A. They are.

Q. Where would a man seeking a place to settle have to go to in order to find land to get at a small price?

A. He would have to go onto the ridges, what we call uplands.

Q. Are there any benches through this area?

A. There are—very often find a flat ridge, top of a ridge flat, and containing 30 or 40 acres in a tract; others smaller benches. From the streams up, you will find benches up to the top of the divide in many localities.

Q. When you speak of ridges, Mr. Martin, you do not mean a pointed peak, or a ridge that comes to a precipitous point, do you?

A. No.

Q. Please describe what you mean by a ridge.

A. By saying a ridge, I mean a rolling country, that is not high, not steep and rough. I mean a gradual slope—rolling country.

Q. Did you ever locate anybody on these railroad lands?

A. No, sir. I refused to. I was asked to do so, but I did not want to take people's money.

Q. They have requested you to assist them in getting locations?

A. I expect a hundred persons have asked me to locate them on railroad land.

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A. Different persons along the Willamette Valley.

Q. Mr. Martin, you testified that there were but few quarter sections in Douglas County, in the lands that you have described, but what would support a family. Now, what do you mean by that?

A. Well, I mean, you take in a township for basis, I mean that in each township, on an average, there is not more than half-a-dozen in each township, but I would consider would support a family.

Q. That includes even and odd numbered sections, does it, Mr. Martin?

A. It includes all the territory in the township.

Q. Well, in Josephine County this land in 31 South that you have mentioned, how would that run as to settlement, as to the susceptibility to settlement and the support of a family, as compared with the Douglas County lands that you have mentioned?

A. Well, it is not so good there. The land is rougher there. It does not run as high a per cent of agricultural land as in Douglas County, the part that I traveled over. It is rougher, although the soil is very good; but it is steeper, and not so good soil as in Douglas and Lane Counties.

Q. Well, how many 160-acre tracts in each one of those townships in 31 South that you have mentioned, would be susceptible to settlement and the support of a family?

A. The work that I did in the two townships only

covered three quarter sections in one and four in the other. I traveled over other ground making preliminary examinations, but did not cruise only the seven quarter sections, in 31 South—7 and 8 West.

Q. How much of the township did you become acquainted with, Mr. Martin, in your cruising and in your travels?

A. About half of each one.

Q. From your knowledge of this land, what percentage of the 160-acre tracts described as I have mentioned in my previous questions would be susceptible to settlement, suitable for settlement, and would support a family?

A. I think about fifteen to twenty-five per cent of the ground that I traveled over in these townships.

Q. Do you mean that about fifteen to twenty-five per cent of the land is susceptible to cultivation?

A. Yes.

Q. Well, how many quarter sections in these townships, not quarter sections by legal quarter section but by 160-acre tracts, lying contiguous in 40-acre legal subdivisions, would support a family, that is, would be suitable for settlement?

A. Well, I would estimate that about that per cent of the quarter sections that I traveled over would support a family—from fifteen to twenty-five.

Q. That is about one-fourth of them—tyenty-five per cent?

A. Yes, from fifteen to twenty-five per cent; hardly a fourth.

Whereupon witness testified that the most part of his work of cruising was in Lane County, and his testimony with reference to these lands which he has mentioned as lying in Douglas County is applicable to the lands in Lane County. They are very much the same on the Douglas County side of the Calapooia Range, they are a little steeper, but the soil is good. The slope is more gradual on the Lane County side, it is more smooth on the Lane County side of the Calapooia Range, to a certain range on the east. When one goes up towards the Cascades it gets higher and rougher, but from 20 south to 6 west the land will average smoother on the Lane County side than it will on the Douglas side. In townships 20, 21, 22, 23 and 24, along there, the soil conditions are very much the same, only the land is steeper on the Douglas County side. There would not be any material difference as to the number of 160-acre tracts that would be suitable for settlement in Lane and Douglas Counties.

Whereupon on cross examination witness testified that he is forty-seven years old and raised on a farm following stock raising and farming until about seventeen years ago. His father had a pre-emption west of Cottage Grove and came to Oregon in 1857. His father's place was west of Cottage Grove. Cottage Grove is in the center of the upper end of the Willamette Valley and is one of the oldest settled sections of Oregon, and

there were many donation claims taken around Cottage Grove, and as the settlement increased the foothills were taken under the homestead and pre-emption laws. Some of the railroad land that was lying in the valleys and foothills has been sold, a good many years ago, and also most of it close in the valley has been sold and that in the foothills around Cottage Grove very near the railroad has been sold. There is timber on a large portion of the unsold land. The demand for timber claims commenced about 1900, and there might have been some demand for timber as early as 1894. Local people did not pay much attention to these timber lands when the demand first arose. His observation is that about 1900 there were a great many eastern people who came out and took timber claims. All kinds of people. There have been homesteads taken all along as far back as he can remember and after the timber demand became active he observed that a good many homesteads were taken away back in timber country and some built cabins and commuted, paid up after fourteen months, got their patents or final receiver's receipts and moved away. A great many of the individual holdings have passed to the large timber owners. The timber and stone act of 1878 was applicable to Oregon and he knows that a great many quarter sections were purchased under that act, which required no settlement and limited the amount to bona fide purchasers to 160 acres where the applicant could swear that he had gone on or seen the land. A great many of these timber claims thus acquired under the timber and stone act passed into the hands of large timber dealers.

The two largest companies that he worked for were the Storey-Bracher Company and Honore Palmer., the son of Mr. and Mrs. Potter Palmer. He cruised a good part of two years for the Palmer people and a longer time for the Storey-Bracher Company and then for other similar concerns or private individuals in different localities. It is his understanding that Honore Palmer represents himself in making these investments, and he is the son of one of the millionaire families of Chicago. He has met Mr. Sumner, his financial representative, and supposes that he is the business manager in the field and looking over these cruises with him and determine whether they would buy or not. He knows that Sumner bought some lands in the vicinity of Eugene near the Booth-Kelly Lumber Company holdings, and witness helped estimate the timber on them. He forgets now whether there were 1,000 or 2,000 acres in one place. It might have been 1900 acres. He would not be positive. He heard that they talked of building a large mill there, and logging railroad to connect with the railroad operated by the Southern Pacific Company. He could not say that he selected these lands, before they were bought, and that he selected them on water sheds so that they could be successfully logged to one place. As a rule he never asked many questions of these people. They put their data before him and asked him to cruise in certain townships and sections and he went ahead and did the work without asking questions. He asked very few questions. He cruised also for Honore Palmer on the Coast Fork of the Willamette River, which is about thirty miles from

Eugene in the Calapooia Range, a spur of the Cascade Mountains, which spur is at right angles to the Cascades. The elevation of the Calapooia in that locality is not very high, but is rather a low divide, from 1,000 feet on up reaching as high as 2,500 feet. The Calapooia crosses Douglas County and a part of Lane County at right angles to the railroad and connects the Coast Range with the Cascade Range and streams that head in the Calapooia are mountain streams and are swift. He would not classify them with Cow Creek, they are not as swift as Cow Creek. The headwaters of the Umpqua River, North and South Umpqua rise in the Cascade Range, and the Umpqua goes to the Coast. The Calapooia River heads in the Calapooia Range and empties into the Umpqua and is a part or stem of the great Umpqua River. He cruised several thousand acres for the Storey-Bracher people, but could not say how many, but thinks perhaps 6,000 or 7,000 acres. He worked all one summer and fall in one place that he remembers of and cruised a strip two miles wide through two townships in the Calapooia Range but never figured it up to say just how many acres, but it runs into thousands. This was in Douglas and Lane Counties, mostly in Lane County. J. O. Storey is one of the main men in the Company; his associates are Bracher Brothers, he thinks, one or two of them. They are from Michigan or Wisconsin or some of those eastern states, and they have been operating in timber lands in Douglas and Lane Counties several years. He first began work for them five, six or seven years ago. He could not say how many

acres they have in their holdings all together, but he has cruised for them nearly 8,000 or 10,000 acres he would think. He has cruised for Michigan, Wisconsin and Iowa people probably 1,500 acres for them in particular. He has not dealt in timber land very much. He took one homestead in section 30, township 23 south, 1 west in Lane County, but he did not prove up. He claimed his homestead about a year. It had some very good timber on it. He relinquished it to the Government and another party took it up immediately. He had an understanding with the party who succeeded him that he would relinquish to the United States who was to make his filing and he received no consideration for his relinquishment. The party in whose favor he relinquished proved up and the quarter was sold to timber people, there was a timber claim under the timber and stone act put on this homestead, when he relinquished to the United States. They filed under the timber and stone act and paid $2.50 an acre for it. It was several years after the man got his final receiver's receipt until he sold to a timber concern. The party had not lived on the land at all, she got about $2,000 for the land. This was perhaps six or eight years ago, but he could not say. The last knowledge he had, the Storey-Bracher Company, he thinks, owned that land. He is not positive but he thinks they were the last owners.

Whereupon witness testified:

Q. Well now, the locating business of so-called settlers on these timber lands has been pretty active in the

last four years, hasn't it?

A. Yes, sir.

Q. And it is still active, or has it rather quieted down?

A. It is rather quiet now.

Q. About the time this suit was commenced, did it become active, in September, 1908, that was?

A. You mean locating on railroad land?

Q. Yes.

A. I presume it was at that time. I am not positive just when this suit commenced.

Q. Do you know how they did that? These men that were doing the business that you declined to do. How did they do it?

Mr. Robb: Objected to as not proper cross examination.

A. Well, I suppose that they would represent that they would go and look the ground over, and then negotiate with people to locate them on it for so much a quarter, and put up notices, have the people to put up notices, and they would form in associations in different parts of the valley, and have an attorney, and locate land that way.

Q. How much did they charge—these timber locators—for picking out a quarter section and getting somebody to make an application to purchase and locate?

Q. You may answer if you know what the ruling charge was.

A. I think the price ran from $25 to $200, perhaps.

Q. Now, isn't it true, Mr. Martin, that these timber brokers or locators did a thriving business for about three or four years there, and got a great many people to make applications to the railroad company, tender them $2.50 an acre, and charge them for locating on these quarter sections?

A. I think that is true.

Q. The record shows here about seven thousand interveners, all of whom claim they have done that. Is that the way this business was done, as far as you know?

A. I could not say as to the number. I have not looked the records up. But there was a great many that were supposed to locate on these lands.

Q. Would these people go out and build a cabin or shack on the quarter that was selected, and stay there a night or two, and then go away?

A. I never saw anyone living on the ground, but I have seen their cabins in my travels that they built. A great many would not build cabins—just put up notices. I would see their notices as I traveled through the country.

Q. Now, what kind of land was it generally that these people had these cabins on and notices posted, timber or otherwise?

A. More or less timber all through the country.

Q. Wasn't it, as far as you could see, about the best timber that could be picked out on these railroad quarters?

A. Well, the location that I observed as a rule covered about all the railroad land in the country.

Q. In other words, they just plastered this railroad land with these notices and attempted locations?

A. I have seen more than one notice on the same claim.

Q. Now, what were they after—the timber that was on the land?

A. I couldn't say.

Q. Well, the land was chiefly valuable for timber, wasn't it?

A. Not as a rule.

Q. Well, wasn't the timber merchantable that was on it?

A. In some places it was.

Q. Well, as a rule these locations were mainly on the unsold railroad land—all on the unsold land, wasn't it?

A. Why, I would think so.

Q. And the unsold land of this company in the counties where you have been and cruised, was timber land, wasn't it?

A. A great part of it was.

Whereupon witness testified that one dollar a thousand feet board measure is the highest price he knew of a quarter section of timber lands selling for in Lane or Douglas County in the last four years, and that was the stumpage price. He knows of quarter sections of land that would run very close to twenty million feet board measure and at a dollar a thousand stumpage that would be $20,000 for a quarter section, but he has not known of any particular quarter section being sold at that price in that locality. He does not think that the market price of stumpage on these timber lands in that County would average as high as a dollar a thousand. The last land that was bought in Douglas and Lane Counties of which he has knowledge, he thinks, sold, a majority of it, at about fifty cents. He thinks it was gathered in large tracts and the small tracts were grouped together. He does not know of any timber companies which are offering to sell stumpage for fifty cents. He does not believe he knows of any large holdings offered for that price now. He does not believe they are very active at present in buying, there seems to be a little lull, which may be on account of pending graduated single tax measure. Some localities of these lands which he has cruised in Douglas and Lane Counties in 160-acre tracts in legal sub-divisions would in his judgment be twenty-five per cent agricultural, others higher. He thinks thirty to forty per cent. By agricultural he means land that is in good localities with good climatic conditions, low altitudes, smooth enough to cultivate, the soil being good,

clear of rocks and such as that.

Whereupn witness testified:

Q. Well, you don't mean that these timber lands are agricultural do you—claims that would go twenty million feet of fir timber—you don't mean that is an agricultural tract, do you, in your classification?

A. I mean that many of the best timber lands are on good soil.

Q. Well then, you would classify a quarter section that had twenty million feet of good saw timber on, if the soil was good, and if it was sufficiently level that it could be plowed over after the timber was removed and the stumps cleared, you would classify that as agricultural?

A. I would.

Q. So that when you say lands are agricultural, or a certain per cent is agricultural, or a certain per cent of quarter sections is agricultural and capable of supporting a family you mean after the timber is taken off, that it has a soil that could be used for some agricultural purpose? That is what you mean?

A. Yes, I classify it as agricultural lands, for the simple reason that it is capable of producing, after the timber is taken off, producing different kinds of crops.

Q. Have you ever had any practical experience in living on a quarter section of this timber land that runs twenty million feet to the quarter, or that is commercially valuable for timber, and tried to make a living on it?

A. I have lived on land very similar. I did not live on land that grew that heavy timber. But I have passed over many of them.

Q. Have you ever known of anybody up in that country that had a quarter section of timber land, that concluded to and was clearing it, rather than sell it for the timber that was on it?

A. Yes, I know of quite a number.

Q. Just name anybody that you know that is on a timber quarter, that is in good faith going ahead, cutting down the saw timber, grubbing out the stumps and burning up the logs, and making any considerable progress in making a farm out of it, instead of holding it for the timber. Just name them. Give the location too.

A. Well, in township 22—well, I would say 21 or 22 south, 4 west—I am not positive now. It is in section 12. Mr. Aaron Kelly was living on a quarter there, doing my work in that vicinity—but he is dead now—clearing up part of it, raising different kind of crops on it.

Q. How much did he have cleared on his quarter section?

A. Oh, probably from five to ten acres.

Q. And what did he do with the balance of the 160 acres?

A. He hadn't done anything with the balance at that time.

Q. How far from the railroad was that?

A. About two or three miles.

Q. And how long had he owned this quarter section? How long had the title been out from the United States?

A. He had been on it a few years—I couldn't say how many.

Q. Do you know whether it was a homestead, or pre-emption, or timber claim?

A. I think it was a homestead.

Q. Had he got his title?

A. No, not at that time.

Q. Then he couldn't cut the timber on it, could he, except for domestic use?

A. Only for his own use, that is all.

Q. Did he have a family there with him?

A. Yes, sir.

Q. Now, what kind of crops did he raise?

A. He had hay and different kinds of garden.

Q. Was he on a little stream?

A. Well, no; he was on a bench, upon a hillside.

Q. Did he have any living water, running stream there?

A. A spring, I think.

Q. Now, did he have any stock?

A. A few.

Q. What kind of stock?

A. Cattle, and perhaps a few horses.

Q. How many cattle did he have, would you say, approximately, now?

A. Well, I couldn't say.

Q. Forty or fifty head?

A. I think not that many.

Q. Were they milk cows or simply beef cattle?

A. Some of them were milk cows.

Q. And was he doing a stock business?

A. He had a few stock, was living there, making a living, and——

Q. Did his stock range out?

A. I simply meant he appeared to be making his living there for his family.

Q. Did he range his cattle over the unenclosed lands outside? Did they go over wherever they wanted to?

A. Those that were turned out could range wherever they wanted to.

Q. Didn't he turn out every one of them, except a few cows that he kept in his enclosure for milk?

A. I think perhaps most of them ran on the range.

Q. How many horses did he have?

A. Not very many.

Q. He had just a team, didn't he?

A. I presume two or three.

Q. He probably had a pony that he rode when he went to town?

A. He didn't have to ride. He could go on a wagon.

Whereupon witness testified that the nearest good trading point of this party was at Cottage Grove, about six, seven or eight miles away, southeast, between the Southern Pacific railroad and the Coast Fork of the Willamette. Comstock and Anlauf are on the railroad and this piece of land was on the Lane County side west of the road and runs pretty close to 1500 feet high from 1200 to 1600 feet, along there. Some of it was very fine timber, but some of it not heavy. The territory of which he is speaking is not in the Comstock locality but across the Calapooia on the Lane County side. It has not been cut off but is in its virgin condition, but is in the same general character of land. The way he went in when he cruised these timber lands on the Santiam, on the Little North Fork of the Santiam above Mehama, he does not know what the exact distance according to air lines would be from Albany, but they were quite a ways east and north from Mill City and above Elkhorn, on the western slope of the Cascades, next to the Cascade Forest Reserve. The settlement, as a rule, in that locality, was not on the best timbered lands but on the ridges and rivers. Some of them were old settlers. Some had not been there many years. One would find an occasional cabin that was not occupied, but not so very many, they were mostly occupied. On the even sections in these tim-

bered lands the settlements extended all the way along the two streams, the North Fork and the Little North Fork, and on both sides of the divide, the low divide between the Little North Fork and the North Fork, and on the other side of the divide, between the Olalla and the Little North Fork very close up to the summit, and he would presume there were a dozen settlers actually living on their quarter sections in that region that he saw, and in most instances they were men with families. He thinks the settlements in the timbered areas with which he is familiar in Douglas and Lane Counties were greater in some of the other localities than that, in proportion to the area he covered. Eliminating the settlers down in the valley in the foothills of Lane County where he has described the sections or territory where he had cruised he would think there would be five, maybe more, to a township, and there is not much difference as to the lands that he has cruised in the eastern part of Douglas County, they were about the same; he thinks the settlement was a little thicker on the west side of Lane County on the Siuslaw as a rule. There was a good deal of settlement on the Siuslaw, Smith River and the Umpqua. The Siuslaw heads near Cottage Grove about twenty-two miles from Eugene and runs from the western part of the county on west to the coast. It does not run through the eastern part of the county. He does not think the timber on the Siuslaw is quite as good on an average as on the Nehalem. Many parts of the little valley along the Siuslaw is covered with heavy timber. Some of it has no timber, some of it is open. He knows the Siuslaw

Gorge through which the Willamette Pacific Railroad Company is building a tunnel and he understands it requires tunnelling to get a railroad through; some places of the Siuslaw River are in a gorge and some places the land is flat on each side of the river for a ways. There is a great deal of land in that section that is timbered. A great deal of it has been burned off. Most of the burned areas was once covered heavily with timber and is reputed to have been burned prior to the coming of the white man, about sixty or seventy years ago at least. The burn is a very large one. He measured one fern sixteen feet high in that locality. The soil is red and dark gray and affords a great deal of food for cattle in that locality. It grows pea vine, gourd vine and clover grows very fine in there when it is sown. Some of the burns are cultivated, but not a very great proportion in that locality. Most of the burn is in a state of nature as left by the fire to the growth of small brush and stuff, such as he has mentioned. The elevation is a great deal lower than 2500 feet. It is not that high as a rule in the Siuslaw country. When one gets up on the high ridges between the streams one gets that elevation, but a great deal of the country is lower than that. He only knows of the purchase of the large timber holdings by the Johnson-Wendling Company in the Siuslaw country this year by reading about it. He has cruised a great deal of the timber during the last twelve years and before that worked some at surveying and different things. He never cruised Douglas and Lane Counties for assessment purposes. The three methods which he uses in cruising

are what are known as single, double and four times running through. He plats the ground, marks the streams and takes the elevations. He writes out his reports in the evening after he gets through his work on blank forms. In his reports he reported anything about soil conditions. With reference to noting the topography of the lands that he cruises, that depends upon the instructions that he receives. He marks the streams in all places and in a majority of cases the people employing him ask for the character of the land. A great deal of the lands he is employed to cruise are timbered lands. As a rule he gets the heighth of trees, while cruising, from measurements of down timber. In some places on these timbered lands the timber is fully matured and in others it is younger and still growing. After the tree becomes fully matured it begins to decay, not so very fast on the start, but as it gets older it decays faster. He knows of some of the full grown timber offered for sale on the Forest Reserve, but thinks that the United States asks $1.50 per thousand for fir timber but they have not been making any sales that he knows of. There are certain restrictions that they compel a person to comply with in the logging of these grounds, and he does not know whether they are too strict or whether it prevents the sale or not. He could not say whether it is the price or the regulations as to the method of leaving the land that constitutes the objection.

Whereupon on re-direct examination the witness testified that lands containing a stand of 20,000,000 feet to 160 acres are very unusual. There are very few of

such lands in Douglas or Lane Counties and there is only one that he knows of in these Counties that is that heavy. He has never seen another claim that had that much timber on it. The timber growth is not uniform or the same in all places. It is very irregular. The timber is not generally heavy as a rule. There is a great deal of light timber, open spots and then one will find a heavy forty possibly, a heavy quarter, but not every section. There is more or less light timber and open spots, some of which would be easy to clear. Since the demand for timber became brisk a comparatively few years ago, there has been an increased demand for agricultural land and for lands that could be cultivated and he has had many applications for land suitable for homesteads in the vicinity of these lands about which he has testified. A great many of these people told him that they wanted these lands for homes, that is these people who sought to engage his services to find them agricultural lands. The demand for lands for homestead purposes in the western part of the State of Oregon is quite general now and has increased during the last ten years. Very little of the public lands are left. It has practically all been taken up. In some cases he knew that these abandoned cabins in the timber of which he has spoken were on homesteads, others he had no way of knowing and he did not inquire, but in some cases he knew that they were on homesteads. He does not think it has been the general practice of the citizens of Oregon to file homesteads on lands and immediately abandon them, after making proof and sell them to a timber company. There were very few of these

abandoned cabins. He knows some of the parties who have filed on homesteads and then abandoned their cabins as he has mentioned. He wishes to say in regard to these abandoned cabins that a very large proportion of them, the majority of these cabins that have been abandoned, the land had been bought by companies, the people sold out, moved to towns, a great many of those who were bought out went to towns. They did not just get up and leave the lands, they sold their lands after they had made their proof, but that was unusual and there were very few of these abandoned homes that he found. He knows of the scrip locations on these lands and knows that scrip was used on a number of even sections, quite a good deal of scrip. Practically all of the streams in this country have their sources in the mountains. 2500 feet elevation on the Calapooia Range is the highest point. The largest burn he knows of in the Coast Range in Lane or Douglas Counties is between the Siuslaw and Smith River and is the burn mentioned containing this high fern. It does not contain very much merchantable timber, but small growth growing up with a small growth of timber. The old settlers claim that the Indians burned this land over in the early days, burned this off every year and kept it burned off. This main big burn was burned off more than fifty years ago, he thinks, although he has no actual knowledge, and no one else he thinks has any actual knowledge when it was burned. The land about which he has testified has increased in fertility but he does not think there has been any material change as to the mountains and the general susceptibility

of the land to settlement since this grant was made. The remainder of these lands about which he has testified besides the per cent of lands that could be tilled, could be used for grazing land. The soil is very good on a great deal of it, but the steeper part of the mountains would be too steep to plow, but it would raise good grass. Fruit would grow well on this land, if it was not too steep to be cultivated. As far as cultivation is concerned it would grow good fruit. He has surveyed for the Government in Township 20 south, 10 west on Smith River in Douglas County. He thinks the ridges divide there at that point and the line follows the Siuslaw a ways and then jogs up on the ridge.

Whereupon witness testified:

Q. Now, Mr. Martin, there has been some testimony in this case, as to the reforestation of this land after the timber is removed. What, in your opinion, is the best use that could be made of the land after the timber is removed from such as is covered with timber?

A. I will say that I have worked for the government on the reserve, and I would say that the agricultural products from this land would be much more valuable to coming generations than the timber by being reforested.

Q. How long would it take to reforest this land? That is, for the timber to attain such growth as would make it merchantable timber, if you know?

A. It takes about two hundred years.

Q. What has been the effect, Mr. Martin, of the sale of this land to large timber companies, and the withdrawal of the lands from the general public market, if you know?

A. It has retarded the settlement of the country, kept back the development of the territory by people not being able to settle on the land.

Q. Are these lands close to transportation?

A. A great deal of them are.

Q. Situated as the railroad lands are in alternate sections, what, if any, effect would that have with reference to the settlement of the even numbered sections?

A. It has retarded the settlement, of course, of the other land to some extent.

Q. In what way, Mr. Martin?

A. Well, on account of causing a more thinly settled locality, you know, in developing schools and such as that, and highways, roads.

Whereupon, on re-cross examination witness testified that what is commonly known as lieu land scrip has been used a great deal for the purpose of acquiring these timber lands in the even sections, in the territory with which he is familiar; he has used some of it himself. J. W. Parrish has used some and he knows by hearsay about the large companies using it, and he knows it has been done according to general information. The last scrip he used for this purpose cost $8.75 per acre. The Northern Pacific Railway Company has located some of

these timber lands in the even sections with scrip, it was in lieu of the Rainier mountain country in Washington, scrip that was given them on land in the Rainier Mountain country. It was put into a reserve, they could locate this scrip on Oregon lands and they got the scrip in lieu of lands granted to the Northern Pacific Railway Company under the Act of July 2, 1864, and could locate the scrip in Oregon and they located a lot of these lands in Douglas and Lane Counties. He could not say exactly how many acres they had scripped in Douglas County on the even sections of these timber lands. Their holdings in the Umpqua Reserve and Cascade Reserve are quite large. The dividing line between the two reserves is the watershed between the Willamette and Row rivers, two tributaries of the Willamette and there are several thousand acres they have scripped, and they have scripped also in the even sections within the indemnity limits of this railroad grant in these counties, but he does not know as to the odd sections. The brown lands shown on "Defendants' Exhibit 259" unavailable for indemnity selections within forest or other reserves from township 17 south nearly the whole distance down to 31 or 32 south in the indemnity limits, designated as lost to the company by reason of being appropriated, or withdrawn, or under reserve, is similar to the land adjoining it in the twenty mile strip and he does not know the exact number of acres in Lane County which the Northern Pacific Railway Company has scripped. He did know the cruise, but has forgotten now, it was a large amount. He did not directly cruise for the Northern Pacific Rail-

road Company, but did work for them under other people, under the cruising party a short time. He arrived at the time it would take to reforest a piece of this timber land, which he says would be two hundred years, by calculating the growth of the timber in different localities, counting the grain to get the number of years it requires to get a certain size to make it merchantable timber and he figures that some of these largest trees may be two hundred years old, or more than that. The oldest tree that he can remember, in these forests, using the accepted method of arriving at the age of trees, is something over two hundred. There are some second growth fir trees in some parts of the Willamette Valley that are not over fifty years old and are eighteen inches through at the butt. The growth of such a tree depends upon the density of the forest, where it is thicker, it does not grow so fast.

Whereupon witness testified :

Q. Do you remember seeing a forest east of the railroad, between Woodburn and Gervais, on the east side of the track as you go south, that forty years ago was just little fir trees, not much higher than the ceiling of this room, that today are seventy-five feet high, and the trees, many of them, are eighteen inches at the butt, and they stand so thick that the sun very rarely penetrates into that grove?

A. I don't know of that particular grove, but I know of others similar.

Q. I call your attention to that grove because it is

along the railroad, and well recognized, and known by everyone who is interested in reforestation?

A. Yes, sir, I think I have noticed the grove.

Q. Well, now, those trees, while not desirable for large mill timbers or mining timbers, will make saw timber for most uses, do they not?

A. To get timber of that size, that should be cut and used to advantage, it has got to be in what they call old growth, very thick, and where it grows tall and slow. The young growth that comes up fast don't make good timber. It don't make good lumber.

Q. That is to say, the timber at fifty years of age is not so good for all purposes as trees that are one hundred years old.

A. No, it is not good, as a rule.

Whereupon upon re-direct examination witness testified that timber that grows rapidly usually is trees that stand by themselves, and are swell butted and the grains are coarse. The other timber is tall and small and the grain is fine and much stronger and takes on a good finish, while the other is hard and coarse grained, and has not the strength the other has. It is considered waste to cut it at that stage. This Northern Pacific scrip, he thinks, can be located on unsurveyed land and was largely located on unsurveyed lands in Oregon. He has no actual knowledge that Northern Pacific scrip has been located on the ten mile indemnity limit of this grant.

Whereupon witness testified:

Q. Now, Mr. Martin, if a settler would go on this land, taking a 160-acre tract, how could he make a living? In what manner?

A. Well, when he first settles on the land, when it is covered with brush and timber, in order to make a living for the first few years, he could put goats on it, and raise them at a very good profit. 160 acres of most any of this land will keep two hundred head of goats. Their food is nearly entirely brush, browse off the young brush and vegetation—requires very little feed for them in the winter in the low altitudes, and the returns on the wool and increase are very profitable.

Q. Is the goat industry carried on to any extent in the vicinity of these lands?

A. The goat industry is scattered all over Lane County and Douglas, as well as farther north.

Q. Now, would they require any food, other than the growth on the land, during the winter season?

A. I have wintered 225 head of goats several winters with less than five ton of hay. Other winters, when they have a little soft snow, why, it requires some feed for a few weeks. A few tons of hay will carry two hundred head through very easily.

Q. Would these people have to buy their hay?

A. Well, they can raise it.

Q. Is their land situated in 160 acre tracts, sufficient land to raise hay that would support a herd of goats?

A. There are very few of these 160-acre tracts but what have light patches of timber and brush that can be cleared easily. The heavy tracts of solid timber over 160-acre tracts, over the entire lot, are very scarce. It is spotted all over the country. And there are always little benches of light timber and brush that can be cleared, and bottoms, small bottoms on the head waters of the streams can be cleared very cheaply, and produce good hay—any kind of agriculture.

Q. Are there many of these spots scattered through the timber of Lane County, that you have spoken of?

A. They are all through it—scattered all through it; some of them quite large—forty acres sometimes.

Q. Would the income from the raising of goats maintain a family?

A. It will.

Q. Support it?

A. Yes, sir.

Whereupon on re-cross examination, witness testified:

Q. Suppose you had 200 goats on each quarter section of this land, would you have the land all fenced to take care of them?

A. It would depend on whether I had to or not.

Q. I know, but suppose that you had to enclose your premises, to confine your pasturage to your own quarter section, and everybody had 200 goats, on each

quarter section, do you think that would be at all practicable, Mr. Martin?

A. I think it would support them easily.

Q. What do these goats raise or produce that is marketable?

A. Well, an increase in the stock.

Q. It is called mohair, isn't it?

A. Yes, sir.

Q. And they raise about how many pounds of mohair to a goat, the best goats that they have in this country?

A. Well, it ranges all the way from 3½ to 5 pounds to the head, owing to the grade.

Q. It takes a mighty good goat, doesn't it, to bring five pounds of mohair?

A. Not a very good Angora to raise five pounds.

Whereupon witness testified that he does not know how many goats there are in Lane County. He knows of one man near his town that owns over five hundred head. He supposes that Polk County is the best goat county in the State. He has heard that there are a great many goats in that county. He knows that goats eat fir, they prefer hardwood browse but would eat the young fir. He has had them to eat it in his own range. They prefer vine maple and hard woods of that description, they really prefer a variety; they browse on all kinds of brush. They will even eat poison oak, and he

has slashed in ground and had young brush start, fir brush, very thick on the ground, and put them in the pasture and cleared it entirely with goats. They would kill it out. They are used to grub any kind of land. They prefer hard wood browse. The average clip of mohair is more than two and a half pounds per head. Every city and town in his locality buys and ships mohair; a greater part of it is sent to London. The price ranges from twenty to forty-five cents per pound and he thinks the average for the last few years has been in the neighborhood of thirty cents per pound, maybe a little more than thirty cents per pound, so that if a man had two hundred goats and raised five pounds to each, that would be one thousand pounds of mohair, which at thirty cents would be worth $300.00.

Whereupon, on re-direct examination, witness testified that if one takes a mixed herd of goats that is usually raised by the rancher he would raise abount one hundred head as the natural increase, worth from $2.00 to $5.00 a head, owing to the grade, and he always sold his best goats at $5.00 a head. For the finest breed of goats, the blue ribbon variety, one would pay several hundred dollars for some of them. These fine goats eat brush just the same as the others. He has no interest in this suit other than as a citizen of the State of Oregon and did not volunteer to come down here but was subpoenaed.

Whereupon, upon re-cross examination, witness testified that he was interviewed by the Government's rep-

resentative at Cottage Grove and made a written statement of what his testimony would be several months ago and later was subpoenaed and brought here as a witness.

Whereupon A CREASON, called as a witness on behalf of complainant, and being duly sworn, testified: That he is fifty-six years old, resides at Roseburg, Douglas County, Oregon, and has lived in Oregon, most of the time in Douglas County, for thirty-three years. Roseburg is near the center of the county, a little north of the center. He has been principally engaged in the stock business since he came to Oregon, and has owned and operated quite a bit of acreage in that county. He has had no experience in the lumber or timber business, other than to buy lumber needed for building purposes, or for fencing. He never owned anything that he figured as timber land, except a quarter of a section in 27-1 West. He has been handling cattle and sheep principally, but some horses in his stock business, and raised them to sell. One of his stock ranches consisted of 1,071 acres and adjoined the City of Roseburg; another, about nine miles east of Roseburg, consisted of 665 acres, another about two miles north of Roseburg consisted of 361 acres, and another consisted of 628 acres, eleven miles west of Roseburg, in Township 27-7; he has some other small pieces scattered around the country. He went to Douglas County in 1879, and he thinks the railroad was constructed to Riddle or Glendale at that time, but he would not say positively as to that. For a distance of forty miles south and twenty or twenty-five miles north of

Roseburg, he has been practically all over, and is acquainted with that territory; and has been clear across the state. He has been frequently over that country the last ten or fifteen years, but has never done any timber cruising. The territory he speaks of extends clear through to the Coast. He is a little bit acquainted in Lane County and knows some of the land in that county directly west of Eugene. He owns 160 acres in there. The railroad land adjoins that, and he has been over that; it is within the limits of the grant and he was told that it was railroad land. He has not been very extensively over Lane County, but has observed the land in that county in the vicinity of this quarter section, of which he speaks; from Albany west, along the Mohawk and Corvallis, and along through ten or twelve miles, he would say, west of the main line of the Southern Pacific, he has been through that a few times buying goats and stock, and riding over the country, and hunting and fishing some, but not as extensively as he has been in Douglas County. He has been up and down the railroad from Portland to the southern boundary line of the state, more or less, and thinks that he has become familiar with the general development of the industrial and commercial resources of Oregon in these vicinities that he speaks of.

Q. State whether or not you know the general method that has been pursued by the railroad company with reference to the disposition of its lands in these communities that you speak of?

Q. During the time that you have resided in that

vicinity.

A. Very much to the disadvantage of the settler.

Q. The question is, do you know?

A. Yes, sir; I know.

Q. State what it is.

A. The country has been held back to a great extent by the settlers being only allowed the even sections, and the odd sections unimproved, disadvantages for schools, for roads, and every other convenience that would be of advantage to the development and the settlement of the country.

Q. Does that observation apply to the general territory that you have described that is within the limits of the railroad grant, or to some particular part of it?

A. To practically all that I have been over.

Q. Do you know the general character of the soil within this territory that you have spoken of? I refer now always to the land within the limits of the railroad grant, unless I otherwise designate.

A. As a whole, you mean?

Q. Yes.

Mr. Fenton: Which he has seen.

Mr. Townsend: Yes.

A. Yes, sir; I am acquainted with it.

Q. Acquainted with the general lay of the country as to elevations and other natural conditions?

A. Yes, sir.

Q. Are you acquainted then with the general question of the adaptability of that land to cultivation and the raising of horticultural and agricultural products?

A. Yes, sir; I think I am.

Q. Are you acquainted with the value of that land for the purpose of settlement and the maintenance of families of the settlers?

A. Yes, sir.

Q. What have you to say as to the quality of that land, considering now the character of the soil, the way in which the land lies, and all other conditions, natural conditions, as to its availability for the purpose of settlement, and the use of the land for the purpose of maintaining and supporting a settler and his family.

Mr. Fenton: Objected to as calling for a conclusion of the witness and not for specific statements of fact, and as therefore incompetent.

A. The land as a whole is very good. It is somewhat broken, but I would say 75 or 80 per cent of the whole is good agricultural land, capable of making many good homes for people that are willing to go into the frontier and hew out a home, clear up the land, take their families, and develop the country and make homes, and could make good livings.

Q. Have you had any experience with reference to the use of logged off lands for agricultural and horticultural purposes?

A. Yes, sir.

Q. Have you taken that into consideration in your previous answer as to the quality of this land?

A. Yes, sir. What I mean by agricultural land is land that is suitable for farming by the work of man cleaning the brush off, timber off, such like as that. None of it can be farmed—I say none of it—a great deal of it cannot be farmed if he had to go right into the timber and stumps to start with, because that has got to come off first. Some of it is open, ready for use at the present.

Q. It has been testified to here, Mr. Creason, that there is not a quarter section of land within this grant, referring now to the unsold lands still held by the railroad company that would support a family. Is that true?

A. Absolutely false.

Q. What proportions of the quarter sections with which you are familiar would support families, if properly handled?

Mr. Fenton: Objected to as calling for a conclusion of the witness without any statement of facts.

A. Their land as a whole, the even and odd sections that I have been through hunting and fishing and running stock, it would be hard for me to pick out an odd section from an even one, but I have some land of my own that the railroad company has land adjoining it which I have leased, or that my man on the place has

leased, that I could say positively, because I have been right on the land and could name the quarter section and the forty, etc., but take the whole back a ways, it would be hard for me to say which section I was on, whether it was an even section or an odd—but take it as a whole, I will venture to say there is not a quarter section in the territory I have been over that would not make some man a reasonably good home; some better than others; but any of it he will find more or less farm land or agricultural land.

Q. Are there any settlers within that territory, speaking now with reference to the limits of this grant?

A. Yes, sir.

Q. Now, have you proceeded west from the grant to the Coast?

A. Clear to the Coast, yes, sir.

Q. State whether you found any difference as to the settlement of the country as you left the grant and proceeded to the Coast.

A. You get out of the grant limit, and you find it much thicker settled than you do in the limit of the grant.

Q. Why is that?

A. The only reason I can account for it is, it has better conveniences—they can have better roads, more settlement; can have schools where they cannot where it is so thinly settled.

Q. Well, what has brought that condition about?

A. Government lands, people are allowed to go and take it as homesteads, pre-emptions, and various ways.

Q. Well, why hasn't the same thing occurred within the limits of the grant?

A. The last number of years the railroad company has absolutely refused to sell it, or have to me, at any rate, as I have made application for it.

Q. In your judgment, if the railroad company had disposed of those lands to settlers, would the same conditions exist within the limits of the grant that you found immediately adjoining it on the west?

A. Much better, because the climatic conditions are much better on the east side of the Coast Range than they are on the west side of the Coast Range. I think it would have been more thickly settled.

Q. Now, how with reference to the sale of these lands in large quanities to timber buyers and others—are you acquainted with that general condition?

A. Not positively. I know in a general way of it being sold in large tracts.

Q. What effect, if any, has that had upon the settlement of the country?

A. Very much held the country back, on account of those people bought it and were holding it for speculative purposes, I presume, or at least they are holding

it and not selling it; no settlers on that land. There are none of those large tracts that I know of that have been bought that ever anybody has allowed any settlers to go on.

Q. Now, in your testimony with reference to the availability of this land to settlement, state whether or not the same thing would be true after the timber is removed, referring now to such lands as are timber lands?

A. Yes, sir.

Q. Do you know of any of these railroad lands that would be valuable for the sole purpose of settlement after the timber is removed?

Mr. Fenton: Objected to as immaterial.

A. Except in a general way as I speak of, with the exception again of these tracts that I have leased, or that my men have leased. But outside of that, to go on any one section to know positively that it is a railroad section, I would not know whether it was an odd one or an even one. But as a whole, why, it would be thickly settled in places—people would be glad to have it, many people.

Q. Do you know, from your own observation at Roseburg, and in that vicinity, whether settlers have come in there and tried to get any of that land?

A. Yes, sir.

Q. To what extent and when? Describe it in a

general way.

A. I know of two men about eighteen miles, I would judge, east of Roseburg, on the North Umpqua River, or close, by the name of Barker, that went in there before the land was surveyed, taking a squatter's right. Afterwards the land was surveyed, and they found that they were on railroad land. They had made homes there, they had cleared up some land, and calculated to prove up on it as Government land till it fell to the railroad company, and since that time they have never been able to get a patent to it. One of them lives in Roseburg at present. The other, a brother of the same man, is dead. They both told me——

Mr. Fenton: Objected to what the witness was told by these people as hearsay.

A. I saw them on the land personally myself.

Mr. Fenton: I do not object to that. I object to what they told you.

Mr. Townsend: Go ahead with your answer.

A. Both of them have told me that they had tried time and again to get the land, and were unable to secure it, and eventually moved off.

Q. When you saw them on the land, what were they doing?

A. Farming it, had a little stock; both of them good hard working men; had families—one of them had a family—the other, I believe, did not, but one of them I know did, because one of his sons is working for me

now.

Q. Do you know whether they had any other means of livelihood than the product of the land upon which they were settled?

A. I think none whatever.

A. How long did they live there?

A. They lived there—well, it is hard to say, but I would say eight to ten years.

Q. Do you know the description of that land?

A. No, sir; I couldn't tell you the exact description, but I can give you very close to it. If I could have the map, I could show you almost exactly.

Mr. Fenton: There is a map right here, Mr. Creason.

A. (Referring to map.) It would be right in there. Before the country was surveyed they went in there. I wouldn't say what section it was in, but it is right at the old Patterson mill and a little above Glide.

Q. Now, how about recent years? Do you know whether there have been any settlers coming into Douglas County, particularly coming to Roseburg?

A. The last seven years there has been the greatest immigration of settlement that Douglas County has ever had, and the last five especially; in fact, for the last ten years, but the last settlement, people are coming all the time in the last five years, there are a great many of them that come looking for homes.

Q. State whether, in your judgment, the railroad lands situated in Douglas County, and particularly those within the limits that you have described, could be disposed of to settlers and reduced to settlement?

A. Yes, sir; very readily.

Q. It has also been testified to here, Mr. Creason, that these unsold lands of the railroad company that are involved in this suit, including the lands in Douglas County, together with the even numbered sections that intervene those railroad lands, are not good for anything excepting the growing of timber, and that the only use, practical use, that can be made of them, is to cut off the growing timber, and then hold them for the purpose of reforesting them. Is that true, in your judgment?

A. Absolutely no truth in it. It would make hundreds of good homes if they would allow people to have it.

Whereupon witness testified that his knowledge of the lands as to sections is limited to the few tracts that he owns individually; these he knows exactly, and the adjoining land he also knows; the other lands within the general boundaries, that he mentioned, but without reference to their legal subdivision, he also knows; and he knows the character of the land; and it is of the same general character all the way through, with the exception of a little bit through Cow Creek Canyon, which is the roughest section of Douglas County.

Q. I was going to ask you about that. The land

is visible from the train as you go along the Oregon and California railroad there in Douglas County, how does it compare with the remainder of the land in Douglas County.

A. South of Roseburg it goes through the roughest section of the country; north of Roseburg through some of the best.

Whereupon witness testified, that he never located a man on a piece of these railroad lands in his life; he did apply to purchase some of it himself; he applied individually twice, once by correspondence and another time by offering the actual cash. He made an application for a number of friends, probably a hundred, he could not say positively, but in the neighborhood of a hundred friends, possibly more, which applications were refused. He knew the character of a part of these lands only that were applied for, and knew positively the piece that he applied for; he had seen the land. The land was of such a character that it could have been made a home of, and would support a family. He heard part of the testimony of the preceding witness, Mr. Martin. A settler when he first goes onto a piece of land, has always the hardest time when he first settles on it to make a living; but if he will go on there, raise a garden, take a little stock, for instance goats, as this man suggested, there is no reason why he could not make a living on any quarter section there is in it. It would not be a practical thing to raise goats, but to clear the land and get rid of the goats, because after the land is cleared the goat is

not as much profit as when the land is uncleared. The goat is a brush animal almost wholly, or nearly so. The goat helps to clear the land very materially, in the way of taking out the small brush or any shrubbery that he can get at, anything that is within his reach. The greater portion of this land after it is cleared is good for any kind of farming that one wants to do—stuff that will grow through Southern Oregon, any kind of garden stuff, fruit and berries of all kinds. Whereupon, on cross examination, witness testified, that he owns in Douglas County 665 acres in one piece, 361 acres in another, 628 acres in another, 161 acres in another, and he has sold off possibly two-thirds of the 1,071 acres which he formerly owned next to Roseburg. The farthest tract away from Roseburg is in Section 2, Township 27 South, Range 1, about thirty miles. Some of the other is in the town of Roseburg; that is a part of this 1,071 acre tract. Part of it is eleven miles west of Roseburg, nearly due west, and part of it from nine to eleven miles east, at the head of Oak Creek, which empties into the North Umpqua, about north of Roseburg, over towards Winchester. The South Umpqua River, for about three-quarters of a mile, runs through Roseburg. Part of this 1,071 acres which he owned, has been patented thirty-five or forty years, and was taken under the donation land law, many years ago, part of it, not all of it, 160 acres of this land, seven miles west of Roseburg, was a donation claim; this which is thirty miles away from Roseburg was a homestead, taken by a man by the name of Strader, witness

has owned it three years. Strader first went on this homestead about nine or ten years ago, and lived on it a little over seven years before he got his patent; it was not surveyed when he went on it; there was some timber on it and some open land; he raised quite a bit of garden stuff and some timothy; there was no road to it; it is not occupied now; he bought the improvements from Strader, which was on the place, but they are not occupied; the improvements are the ones that Strader made. Witness has not made any improvements himself, but has kept the place leased to the Forest Service for two years, and occupied, he thinks, by a ranger, but could not say, but that is his understanding. He leased the whole 160 acres for what the taxes amounted to, some $14 a year, last year. All these other lands, other than the homestead, he used for stock purposes and they are more or less timbered, with fir and some oak; and are on what they call hill land. His principal business is that of a stock man, but he hasn't a great deal of stock. He keeps the 628 acres leased, the 665 acres leased and the 361 acres leased to people for stock purposes by them. As rental for these leased lands he gets part of the stock and of the produce that is raised on the lands. He leases on what is called one-third. He gets as rentals more than three per cent on the value of his land, after paying the taxes. Five per cent net, after paying taxes, is good fair profit for a farmer. Eighty acres of one of these tracts of his, east of town, was railroad land, but he does not know how long ago it was purchased from the railroad company. A man by the name of

Shoemaker bought the land and he thinks it must have been sold less than thirty years ago, possibly twenty, he could not say. He does not know what Shoemaker paid for that eighty; it has good timber on it, quite a bit of it, and it is saw timber. He thinks Shoemaker bought it directly from the railroad company, but he does not think Shoemaker lived on it; in fact, there has never been any improvements on it. Shoemaker lived adjoining this tract, and used it in connection with the lands he had adjoining, and used it principally for stock purposes. There is a part of the land which he owns that would be worth two or three thousand dollars an acre and part of it not over twenty or twenty-five dollars an acre; the land north of Roseburg is valuable land. The land on Oak Creek is about nine miles from Roseburg, and the farthest is about eleven miles; and it is worth about twenty or twenty-five dollars an acre. He has about thirty acres in cultivation in the 361 acre tract, and about sixty acres in the 665 acre tract. Practically all of these two places on Oak Creek is fenced; he does not know of a forty acres that lays out open on the range. He knows of cattle men, stock men and sheep men herding their stock into the mountains or foothills on the open lands, and he does that himself. He gets permission from the Forest Service to drive his stock into the Forest Reserve. When he has them down in the lower part of the country they are in inclosures all the time. The number of acres that they run over when they are in the Forest Reserve depends on the amount of stock one wants to run as to the amount of land that the Forest

Service will set aside for a person. It is hard to say how much he did have in the Forest Reserve; he had three locations where the area was quite large, but the grazing part of it, where the best grass was, was not so large. By quite a large area, he means several thousand acres. The Forest Service does not charge him by the acre, but by the head; that is, five cents for sheep and twenty-five cents for cattle; and one can go in in May and stay until November, and pay five cents for sheep and twenty-five cents for cattle for the season. He does not think the Forest Service leases any land at all. They charge for a permit; the man that runs the stock on the lands pays so much a head. He does not know of any one, outside of the Forest Service, that leases land, or gives any permits for leasing lands, except in the valleys where he lives, one would lease from his neighbor. Roseburg is one of the old settled sections of Oregon, and he thinks the Umpqua Valley has been settled for about fifty years. Oakland has between 800 and 1000 inhabitants, and is eighteen miles north of Roseburg in an old settled section. He was never around Drain a great deal. He went directly to San Francisco and made the applications to purchase the railroad lands, which he applied for, and made these applications to Charles W. Eberlein for 160 acres, being the SW¼ of Section 23, Township 27 South, Range 9 West, he thinks it is. He had been over that land before he made his application; it is rolling land and has fir timber on it principally; and he offered to pay Eberlein $2.50 an acre for it.

Q. And you did that under the claim that you were

entitled to it under the act of April 10, 1869?

A. I thought I was; yes, sir.

Q. Yes, I know. Were you advised to do that by Mr. Leavengood?

A. No, sir.

Q. By anyone?

A. No, sir.

Q. Well now, how did you find out about that?

A. I knew it ever since I have lived in Oregon.

Q. You knew of that provision.

A. Yes, sir.

Q. And it was generally known, wasn't it?

A. I think it is generally known. Any man that didn't know it, it is probably through his own ignorance. It was plain for anybody to know. It was a matter of record.

Q. Yes, a matter of public statute.

A. I think so, yes.

Whereupon witness testified, that he represented about 100 or more applicants, a majority of whom lived in Roseburg. He did not make out their papers for them, but a lawyer by the name of A. N. Orcutt, a partner of Judge Fullerton at one time, made them out. Orcutt is his attorney, but not in this matter. These 100 applicants employed Orcutt, who went down with witness to San Francisco and was present when witness

made the tender to Eberlein; Orcutt was present and saw that it was well done; witness took these 100 applications with him at two different times. These applications were printed blanks; and in the blank applications they applied for a particular quarter section and offered to pay $2.50 an acre, and represented that they desired the land for actual settlement; and they claimed the right under the Act of April 10, 1869. He could not say whether there was an affidavit to these various application blanks; it was a written form and made a matter of record when he returned to Douglas County. He did not commence any suit on these applications, and is not sure whether any of these people are interveners. He does not know who located these other quarter sections applied for by these 100 people, but he knows that Charles Thoms located a few of them. Thoms might have been a timberman at that time, but he is now in business in Coos County. He knows that twelve or fifteen of these people were not charged anything for locating them, but he does not know whether Thoms charged generally. He knows that they did not generally get from $75 to $150 a piece for each claim, these that he is speaking of. He thinks a majority of them paid $5. He does not know what kind of lands these men applied for, or anything about the character of these lands, except a few of them, three or four different ones that he knows of; Simon Caro, for instance, he knew what he applied for, because his claim was quite close to his own, and he had seen it himself. Caro was a merchant in Roseburg, and he has been there thirty or

forty years in business; he applied for a pretty well timbered quarter section. All this happened about four years ago, he thinks, but he could not be positive; it happened long before this suit was commenced; he thinks it would be two years before the suit was begun, which was September 4, 1908. He could not state positively if it was before or after April 30, 1908, but the records will show exactly when it was done, because the applications were made a matter of record when they returned from San Francisco. There was a good deal of agitation about that time, and he was one of those who first started it; and he certainly was active in starting it; he had feeling in the matter and wanted to see his neighbors get some of the land; wanted to see the settlers, or men coming into the country, get some of it if they could. He had no feeling against the railroad company, none whatever; but he wanted some of the land. The quarter section that he applied for is worth, in his judgment, today, five or six thousand dollars, and the principal value of it at present would be for the timber that is on it. He only knew a few of the other quarter sections applied for; they were similar to the one he made application for and about the same thing. He figured the quarter section he applied for was worth more than he was to pay for it and he thought it was worth five thousand dollars, and he offered to pay four hundred dollars for it.

Q. Now, these two settlers that you speak about going in on unsurveyed land that the railroad company wouldn't sell them, that is between Glide and Hoaglin?

A. Yes, sir; on the south side of the river.

Q. On what river?

A. The North Umpqua.

Whereupon witness testified, that this land, above referred to, was on the North Fork of the North Umpqua River, and was rolling land, pretty well covered with timber. It would be hard for him to say what these two quarter sections were worth, but he would say three or four thousand dollars. The man that lived there raised more or less garden stuff, and had some stock which roamed mostly on the hills adjoining him; he does not think that he had all the land fenced at the time; he had some of this quarter section fenced, but could not state as to how much; he knows that he had, because he was there and saw it; he had fifteen or twenty acres in cultivation on the hillside, on the slope of the hill. On one of these claims there was no creek at all; it slopes towards the North Umpqua River. The land did not lead down to the river, but led towards the river. One of these tracts was a quarter of a mile from the river; it might have run through one of them; but one of them the river did not touch, he thinks. They had access to the entire range back of them for their stock, and every person had the same. One of them had twelve or fifteen head of stock, but he does not know as to the other. He thinks that these places were from sixteen to twenty miles from Roseburg.

Q. Now, when you speak of this land being 75 to 80 per cent agricultural, you mean after the timber is taken off and the land is cleard?

A. I mean right today, it is 75 per cent of it that is good agricultural land.

Q. Well, you don't mean that it is now fit to be used for agricultural purposes until the timber is cut off?

A. Until it is cleared up, sure enough.

Q. Then, when you say agricultural to the extent of 75 to 80 per cent, you include in that these best timbered quarters?

A. I include everything that can be cultivated, that is good reasonable land for cultivation.

Q. After the timber is taken off.

A. No, after or before, just what will be good for agriculture when it is put in condition to be cultivated.

Q. You take 160 acres that is heavily timbered, how are you going to cultivate that now?

A. Cut the timber off it.

Q. That is what I asked you?

A. Yes, sir.

Q. You classify 160 acres of the best timber land in Douglas County as agricultural if it has good soil.

A. If it has good soil and can be cultivated.

Q. Yes, after the timber is off?

A. Certainly.

Whereupon witness testified, that he wrote to the company to try to buy some of these railroad lands ad-

joining him on Oak Creek, other than the formal application to which he has referred; it was the same character of land, rolling timber and brush. This was from five to seven years ago; it was some years before this agitation was started. He thinks it was before 1907, it seems to him it was about 1905, but he would not say positively. He applied for eighty acres, wrote to the general offices in San Francisco. Judge Fullerton gave him the address to write to and he wrote that he wanted to buy it and wanted to know if the land was for sale, and what they would take for it; and they replied that it was not on the market for sale. He does not know that it was Eberlien who replied to him, but thinks it was one of his clerks and he thinks the name was Henry Conlin, who was one of Eberlein's clerks. It was ordinary hill land, which could be cultivated if the timber and brush was off of it. Some of it was fair timber, but it did not have any saw timber. There was some oak and fir, young fir and a little laurel on it; and some creek bottom land, and a little ash swale on it. The first general inquiry for the purchase of timber lands in Douglas County, to his knowledge, he thinks was about nine years ago, as nearly as he can remember. The last three years it has not been very active, and before that, at times, it seemed to be very active. His recollection is that the inquiry for timber, some market for timber, developed somewhere about 1908, he might be mistaken a year or two in the date, it was between eight and ten years ago when the first timber rush began, he means when the demand began. There might have been

some inquiry for these timber lands before 1902 or 1903, but he had never taken any interest in these timber lands, and did not hear of any particular demand until somewheres about 1902 or 1903; there was quite a rush from four to seven years ago. To his knowledge the best price that any quarter section of timber land has sold for, either stumpage or by the quarter section, he thinks, has been about $5,000; this was situated on the west slope of the Coast Range in Coos County on the head of Coos River. A. O. Rhodes sold that quarter section.

Q. Do you know any of these large timber investors in Douglas County? I mean, know of their holdings?

A. I have been over what was claimed to me to be part of their holdings.

Q. What companies do you refer to?

A. Booth-Kelly Lumber Company.

Q. And have you been over any of the timber holdings of C. A. Smith Company?

A. I have been on part of theirs.

Q. And the Meenah-Oregon Land Company?

A. I have heard of them, but I don't know where their lands are.

Q. The Roach Timber Company?

A. I have been on some of that.

Q. Kendall Brothers?

A. Kendall Brothers, I have been on a good deal

of that.

Q. Pillsbury Lumber Company.

A. I know that.

Q. Lennon Land Company?

A. I don't know that.

Q. Bradford Timber Company?

A. I don't know that.

Q. Myrtle Lumber Company?

A. I know a little of theirs.

Q. Gardiner Mill Company.

A. I know part of theirs.

Q. Weyerhauser Land Company?

A. A little of that.

Q. A. H. Hinckson?

A. His is scattered all over. I know a little of that.

Q. Sparrow, Coach & Kroll?

A. I don't know that.

Q. Do you know any of the holdings of the Northern Pacific Railway Company, that have been scripped by that company in Douglas County?

A. No, sir; I don't.

Q. You have never been in the timber business yourself?

A. No, never been in the business.

Q. Never made any investments in timber excepting this quarter section of the homstead that you bought?

A. That is all. I did buy a piece, too, in Jackson County.

Whereupon witness testified, that the land he bought in Jackson County, three years ago, and still owns, he never saw and does not know where it is, that is, not what township and range, but he thinks it is in the northwestern part of Jackson County; he bought "unsight and unseen," as they used to say; he had a cruiser, who claimed to have seen it, a man whom he thought he could trust; he did not buy it on a cruise, and he did not get a cruise. A man had cruised it, that he knew, and he talked with him about it, and he told him that it was a good piece of land, that there was forty to sixty acres of it that would be good farm land, and it had some very good timber on it and that it would cruise about 3,000,000 feet, if he remembered right.

Q. What did you pay for it?

A. That is my business.

Q. Did you buy it three years ago.

A. Three years ago.

Q. Well, then, you decline to answer?

A. Yes, sir.

Q. Well, what is it worth?

A. It is worth $2,000.

Q. One hundred and sixty acres?

A. Yes, sir.

Whereupon witness testified, that this land last referred to is not railroad land and he does not know whether it is in the railroad limits or not. He believes it was not a homestead; he thinks it had been homesteaded and then commuted; that is the way he understood it. There were no improvements on it that he knew of; he never saw the land. He presumes, but did not know, that it had the usual cabin of a homestead settler. Whereupon on redirect examination witness testified:

Q. You know in a general way about homestead cabins, do you?

A. Yes, sir; in a general way I know.

Q. You know also, in a general way, about the way railroad companies try to get 2,300,000 acres of land that they are not entitled to?

Mr. Fenton: I object to that as incompetent, and I think improper on the part of Government counsel.

A. I believe that is their method.

Q. Do you know of any reason why, if a man has defrauded the Government of 160 acres of land by a homestead entry, that a railroad should take two million three hundred thousand acres that they are not entitled to?

Mr. Fenton: I protest against this inquiry on the part of Government counsel representing the Depart-

ment of Justice.

A. The Government never let 160 acres go, or no other number of acres, that they didn't get their money for, except they let it go to some railroad corporation.

Mr. Fenton: I move to strike out the answer of the witness as immaterial and irrelevant, and as not responsive to this inquiry at all.

Q. What have you to say as to these large holdings that have been called to your attention, of the C. A. Smith Company and other companies as to the character of the land? Is it of the same general character that you have described, or different, and if different, in what respect?

A. The same general character of land. A great portion of it is good agricultural land when cleaned up.

Q. One of the railroad land examiners and cruisers has testified here that in the whole of Douglas County there is not to exceed 600 acres of these unsold railroad lands that are agricultural in character and that can be cultivated. What have you to say as to the correctness of that testimony?

A. He is absolutely mistaken. If he has ever been over any portion of it to speak of, he knows that he is wrong.

Mr. Fenton: Defendants move to strike out the answer as argumentative, not testimony.

Q. Now, your attention has been directed to the increase in the demand for these lands for timber pur-

poses. I will ask you whether or not there has been, at any time within your recollection, an increase in the demand for lands for agricultural purposes and for home purposes, and if so, when?

A. In the last seven years, or say for the last ten—seven especially—there has been more demand for homes, for agricultural lands, than there has for any other character of lands. Land of all kinds has advanced in the last few years. I would say, from one to four hundred per cent—agricultural lands.

Q. Now, have markets improved for agricultural products in the mean time?

A. Yes, sir.

Q. What have you to say as to whether the development of that country has also been held back by lack of transportation facilities?

A. Very much so.

Q. Now, this homestead that you bought from the original homesteader, who lived upon it some seven years, as you testified, and which is situated about eighteen or twenty miles from Roseburg—about thirty miles, close to thirty.

Q. Thirty miles from Roseburg, do you know whether the intervening land between his homestead and the railroad was developed in the meantime or not?

A. No, sir.

Q. To what extent, if any, did that affect his op-

portunity to maintain a home there?

A. It affected him very materially. He was nearly thirty miles from railroad transportation, sixteen or eighteen miles from a school, for all he had no family; no wagon roads, and most impossible for a man without means to have made roads when he had to make them all across railroad quarters or lands and others.

Mr. Fenton: I thought that land was west of Roseburg?

A. East of Roseburg, in 27-1, section 2, right on the divide between the North Umpqua and what is called the East Umpqua, or the Middle Fork. I can put my finger right on it. (Witness points to place on map.)

Whereupon on recross examination witness testified, that the homestead he bought is in Section 2, Township 27 South, Range 1 West, and is in a Forest Reserve; it was unsurveyed when he took it, but it is now about three miles inside of the Forest Reserve, or something like that. He does not think that there is any railroad land adjoining it, that he knows of, and he thinks the nearest railroad section, according to the map, would be about five miles west. He does not know how long that Reserve has been there; he knows that that was one of the main drawbacks to his getting his title to it, the forest rangers opposed it and claimed that they wanted the land for a ranger's station and that part of it was timber land. Practically all of it is agricultural land, but it was the contention of the forest rangers that it was timber land; it was finally patented to the man from whom

he bought it. He did not buy it for the timber primarily, and he did not buy it for a home; he bought it for an investment. Practically all of it is good agricultural land. Part of it is already cleared of timber; and the part that has timber on it is good agricultural land after it is cleared. Whereupon on redirect examination witness testified, that there are no settlements around this land that he applied to purchase and no road into it; and he believes that he could sell it for more for the value of the timber to some of these big timber men than he could for a man to go on to make a home of, but the quarter section would make some man a good home that would go on there and clean it up. There is some good farm land on it. In his judgment, the value of that land for agricultural purposes, after the timber was removed, and assuming that the land in that vicinitly was also similarly settled up, would be eight or ten thousand dollars.

Whereupon CAL HILEMAN, called as a witness on behalf of complainant, and being duly sworn, testified, that he is thirty-six years old, was raised close to Knoxville, Tennessee, and his post office address at the present time is Wendling, Oregon; his present occupation is ranching on a small ranch. He has lived in Oregon about twenty-two or twenty-three years. He lived on the McKenzie a few years, was east of The Dalles a couple of years, and lived on the Mohawk River eight or nine or ten years. The Mohawk River is located near Mabel, east of Eugene, in Lane County, Oregon. He was raised on a good farm, and his father had a good

sized farm all his life. Farming has been his occupation up to the time he was married thirteen years ago; since that time he drove team four years for the Hyland Lumber Company, and T. R. Yeager, and the Sunset Lumber Company at Mabel. His experience has been such as to familiarize him with the farming industry of Western Oregon; he has worked quite a bit of land there. He has been in contact with the people engaged in farming, to a considerable extent. He is only familiar from memory, without referring to the map, with Section 33, Township 15 South, Range 1 East of these railroad lands involved in this suit. Referring to Defendants' Exhibit 259, he does not know much about the townships and ranges through that country, but has ridden over lots of that country, and is familiar with all the country through Marcola, on the Mohawk, in Township 16 South, Range 2 West. He lives on Section 33, Township 15 South, Range 1 West, and is acquainted with the lands about Mabel, in Township 15 South, Range 1 West, and a few miles north of Mabel. He is acquainted with the lands in the vicinity of Camp Creek some, and has ridden in there quite a bit. He rode that country from Marcola to Camp Creek, all through there —clear through to Walterville. He is acquainted very little south of Walterville. He has been over that country to Mabel and Wendling, Walterville, Mohawk and Camp Creek, shown on Defendants' Exhibit 259, and has traveled the wagon roads and has been in the hills through there, driving cattle, but did not know, of course, whether it was railroad land. He has traveled over them

a number of times, other than on the public highways. He had cattle in there, and he was looking after cattle, and gathering cattle in the fall, and all through the summer he made from two to three trips a month salting cattle. He would go north of Mabel about three or four miles, and would go through about three or four miles above Wendling. He never gathered cattle east of Wendling, that is, run cattle in there, but he has bought cattle east, clear through all over the valley, and is acquainted with these lands east of Mabel about seven or eight miles, and about three to five miles, something like that, above Wendling, and as far as Mabel, and about six or seven miles east of Wendling; west of Wendling he does not know how many miles, but a good ways. South of Camp Creek he has not traveled very much. He has a general knowledge of the entire country from Mabel, in Township 15 South, Range 1 West, to Township 17 South, Range 1 West, and gained that knowledge by traveling along the public highways and ranging cattle through that country. His duties with reference to the stock would carry him off the public highways, and over this land generally, and he is acquainted with the general character of that land, and with its agricultural and grazing possibilities, and with the growths that are on the land, such as timber, and is acquainted with the hills, and the general formation of the country. His father's farm, that he speaks of having been raised on, was at Mabel, in the same section that Mabel is in; he could not tell the description, or what section, township or range, except as they have referred

to Defendants' Exhibit 259. He looked at his deed and thought his land was in Section 33, Township 15 South, Range 1 East; that is his place, which is about a half mile east of Mabel; and his father's farm is contiguous to his lands, where his father has lived about twenty-three years, engaged in farming, and he farms it all the time, every year; and that has been his occupation since he has lived there; he has raised a family. From his acquaintance with this land in the area he has described, in his judgment, fifty to sixty per cent would be agricultural land, that is, land that could be tilled, and actually cultivated. The balance of the land would be useful for grazing. The grazing land in that vicinity is good; it raises good grass. He applied to the railroad company to purchase land from them; he thought it was about seven years ago, but it is in the neighborhood of about ten years ago. This land is located in Section 33, Township 15 South, Range 1 East, where they adjoin the land he now lives on; it was a good piece of land, which he wanted to farm. At that time he had not bought the place he now lives on, but he wanted this piece of railroad land to live on. The company offered to sell him the land, but he wanted to buy eighty acres, and they said the 320 acres was for sale, at $10.00 an acre and he wanted eighty acres of it. He did not make an application for 320 acres; they did not put any price on the eighty-acre tract he wanted, and so he just dropped it. The railroad lands generally in the vicinity of his place and that of his father's farm, are good. He has been farming railroad land. He bought 120 acres of

railroad land and has been farming it for five or six years; he bought that from some party other than the railroad company. He could not see any difference in that land from the other lands in that locality. There was no timber, to speak of, on the lands that he and his father have, very little. The growth of timber in that general vicinity is pretty good. He had to clear some of his land in order to farm it; he cut the underbrush, burned it, and the stumps still remain; he plowed around the stumps. It had been timbered land prior to the time he began to cultivate it. The Hyland Lumber Company bought it, and logged the timber off, and he bought the stump land. It belonged to an old gentleman by the name of Wortman, who died, and the timber had to be sold; the Hyland Lumber Company bought the timber, and he bought the land. The Hyland Lumber Company is composed of Hyland Brothers. The timber on this piece that he bought was good, but scattered and light. There had been trees growing on his father's place in patches, but there was about 100 acres of it that he did not think ever had any timber on it. There is timber growing on some of this land that he mentioned as between Mabel and Camp Creek. There are places in there similar to the places that he is farming and that his father is farming. Referring to his neighbors through the neighborhood there, there are Adams, Ernests, Hammonds, Riggs, Van Meter, Smith, Pickwitt, Arnold, Downings and a number of others, who live in that vicinity where he does, and are engaged in farming. That is a general farming community in

that locality. He knows by hearsay that the railroad company owns considerable land in that vicinity, of which he speaks, and he knows that he applied to purchase some of it. Whereupon on cross examination witness testified, that he could not say how long ago the land that his father owns had been deeded by the man, or the persons who preceded his father, or when the railroad company sold it, but he thinks it was a great many years ago. It is situated on the Mohawk River, and his father has cleared about 130 or 135 acres and owns about 270 acres. He could not state whether it was all railroad land. There is quite a mountain on his father's place, about thirty or thirty-five acres, maybe forty acres; most of the land in the bottom is cleared, he thinks there are eighteen acres up on the high bench, the rest of it is on the Mohawk River bottom. He does not know whether that place was bought from the railroad company twenty-five or thirty years ago. The improvements on it are fairly good; a barn and frame house with six or seven rooms, and has a fire place and chimney.

Q. And the garden there is old, so old that you have to manure it to keep it up?

A. Well, I suppose they do.

Q. About like one of these farms down in the Willamette Valley, as far as development and age is concerned? Is that right?

A. Yes, sir. Some of it has been farmed a good many years.

Q. Some of it has been farmed so long that it really don't raise wheat very well without it is summer-fallowed, or crops are rotated?

A. Well, he has some mighty fine wheat on it.

Q. I know, but he has to have oats one year and then has wheat the next year?

A. Well, I couldn't say for that, whether he changes it around that way or not.

Whereupon witness testified, that that is good farming land if he changes the crops around. He does not summer-fallow very much. He does not sheep it though when he does summer-fallow. He has no sheep, but has a few cattle. His father never had any cattle to speak of, just a few horses; besides cattle, he has four or six head of cattle. The place witness has in Section 33, Township 15 South, Range 1 East, is just above his father's, on the Mohawk River, which runs through his place, which is just a small stream. They used to log down that stream before the railroad was built, all the logs that they had that came from that watershed, came down the Mohawk River, and went to Coburg, which is somewhere in the neighborhood of twenty-two or twenty-three miles away from his place. He owns 112 acres there, and his land was railroad land. He bought from the Wortman heirs; Wortman died and the Wortman estate had to sell the timber; and the Hyland Lumber Company bought the timber and paid $400 for it and he paid $400 for the land. He couldn't say positively how long the Wortmans owned the land,

but several years though; it was not improved by them at all, but was wild land and he improved it and built a house on it. He has one acre cleared now of stumps on that land, and the stumps still remain there on the balance. After the Hyland Lumber Company logged it off, he slashed it and burned it over and sowed it to grass, and he pastures part of it, that is, he did that at first. He has about four acres only in cultivation, sown to crops, besides the grass, and he raises on this four acres oat-hay to feed his cows and horses in the winter time. He raises just a little corn down in his garden for family use, has a few head of hogs, for home use, he runs all the way from ten to fifty head of cattle and they run on the range all the way from two to seven miles from his place; he has a fine range there over seven or eight miles of country, or a good deal larger than that, and can pasture the railroad land if there is any railroad land in there, and in that way he gets some pasturage by going over a big area; they can go seven or eight miles without going through a fence, they can go a long ways, several hundred, he thinks; they can go to the Blue River and clear on through, if they have a mind to do it, which is over thirty miles. Stockmen sometimes drive in, but he does not think that they herd any during the summer months. They brand the stock with a registered brand and turn them loose, and then in the fall come and gather them up. They pasture these railroad lands just the same as the other lands.

Q. The railroad company pays the taxes on the lands, and the farmers in these boundaries get the bene-

fit of it—in pasturage, I mean?

A. Yes, sir; we turn our stock out and let them go.

Q. Well, now, if you didn't have any outside pasture, these people that drive their herds in there in the spring and go up and get them in the fall, they wouldn't be able to do that?

A. No, sir; they would not.

Q. If all the quarter sections were fenced in there, and everybody had to confine his stock to his own quarter section, the pasturage for each man would not be as great, would it?

A. Well, he would just have to keep what the place would furnish grass for.

Whereupon witness testified, that he would not want to keep very many cattle on 160 acres, but that amount of land would keep quite a few sheep for awhile. It would keep them longer than one season, and if one don't keep the sheep too long, it would keep from 100 to 150 head.

Q. Yes, you can keep 150 head a month, but you could not keep them all summer?

A. Oh, yes.

Whereupon witness testified, that they could not run sheep and cattle together very well, they won't run together very well, and won't pasture over the same grass very well. He has never tried running hogs and cattle together, and he does not know about that. He is a farmer and has a separate pasture for his hogs. He

knows that sheep won't follow cattle and cattle won't follow sheep. He could not tell how many bushels of grain he or his father had threshed on their places, witness has not threshed any. He could not tell how much his father threshed on his place this year; he had wheat and oats and he could not tell whether he hauled that to market, but he knows that he feeds some to his stock on his place and sells lots of it over the neighborhood, to fellows who live on places and do not raise any to feed their cattle in the winter time, like himself. Lots of these farmers up there come to his father's place for wheat and oats. These farmers raise lots of hay, but sell their hay and buy oats. They sell their hay to timber companies, the Booth-Kelly Lumber Company and the Coast Range Lumber Company. There are several parties on these timber lands that have all the way from fifteen to fifty acres on bottom lands and uphill land, too. Mr. Pickwitt has somewhere about twenty-five or thirty acres on that hill land. He thinks Pickwitt has owned his land twenty-three or twenty-four years. He could not tell if it was a donation claim, but he thinks he homesteaded part of it. He does not think it was railroad land. It is on the Mohawk River right there close to Mabel, just about a mile from the Mohawk River. He does not think that there is any branch that runs through this place. Mabel is a small place and there is nothing there but a saw mill; he could not say how many men work in that saw mill, but he thinks somewhere in the neighborhood of about 250 at the present time. The saw mill is owned by the Coast

Range Lumber Company. He does not know how many acres of timber they have there; the closest timber is within a mile of the mill. They get their logs to the mill by their own logging railroad. He does not think they ship any timber. He could not tell how much lumber they cut per day; he does not think they cut very much at the present time. Some of the men who work there live in their houses. They have only about, he thinks, somewhere in the neighborhood of twenty new houses, and there is quite a good many in tents, and other old houses, other shacks. The company maintains part of these houses, in which the men live, while they work, and the rest of the men live in tents and old houses. It is really a logging town; there is a store and post office there, besides the mill. He could not tell when the saw mill was established; there has been a mill there for years. It is a logging country. There is timber back aways, lots of it.

Q. This land that you speak of as having good soil, isn't it true that where there is heavy timber on this land, as a general thing, the soil is better than where there is no timber?

A. Well, that may be true, or most of it is.

Whereupon witness testified, that he thinks the market price of a good quarter section of timber would be from three to five thousand dollars, but he could not tell the stumpage value of timber in that vicinity, and does not know of any sold at this time; he has heard of it being sold, lots of it, but they give so much for the bulk

of it. He thinks that Pickwitt's place was a homestead.

Q. Did you see any homestead cabins up there, where they proved up and sold out—got their titles and sold out to timber people?

A. Yes, sir.

Q. What became of their cabins?

A. They burned down.

Q. Where the timber was, if the cabin was in the timber, it didn't burn that, did it?

A. Well, part of those cabins there was no timber within—oh, there was a lot of them was three or four-acre tracts; there was an opening where they had built their cabins.

Q. They had cleared out three or four acres, such a matter?

A. No, there was no timber there—never was.

Q. They built their cabins in this opening?

A. Yes.

Q. And the rest of it was timber.

A. Yes, sir.

Q. And after they proved up, they sold the land to timber companies?

A. Yes, sir; Booth-Kelly Lumber Company.

Q. Booth-Kelly Lumber Company bought a good deal of that?

A. I think so.

Q. And they are logging it off?

A. Well, they have logged part of it. Some of it they have not.

Q. Well, then, this land up there that is worth $3,000 to $5,000 a quarter is chiefly valuable at the present time for the timber that is on it, isn't it—at this time?

Mr. Rabb: Do you understand the question?

A. No, I didn't.

(Question read.)

A. With the timber on it, it is, yes, sir.

Q. That is the principal object that makes it sell, is the good timber on it?

Whereupon witness testified that he never made an offer on any of this railroad land, or any application to purchase any of it, other than this eighty acres that he has spoken of.

Q. How often did you go out in the summer time to salt your cattle in these woods, in the mountains?

A. Well, from two to three times a month, and sometimes oftener when I wasn't busy.

Whereupon witness testified, that the way he recognizes his cattle is that they are branded with a registered brand; other people go out and salt their cattle, too, in the summer time. They generally turn the cattle out on the range sometime in March, or April, and gather them, sometimes not until November, and sometimes

not until December. They let the calves run with the cattle out in the woods until fall, and brand the calves the next spring and turn them out. Sometimes cattle disappear, but he does not know what becomes of them, that is about the only risk that they run. They get free pasturage during the summer time. Whereupon on redirect examination, witness testified, that he raised on his place besides hay and oats, cabbage, potatoes, beets, rutabagas, parsnips, carrots, corn, tomatoes, cucumbers, peaches and apples, raised practically all kinds of fruits and vegetables. He keeps a few hogs and feeds them on his place. He never measured the acres he had planted to oats and hay exactly, but he thinks there are only about three or four acres of it. The land down in that country is about the same. It is situated about the same as his own place. It is a broken country. There would be patches maybe of four or five acres that is nice level garden land, and that condition is true in reference to where his father's farm is located.

Q. Now, Mr. Hileman, what is your opinion as to whether a man could go onto 160 acres, and settle with his family on 160 acres of land, generally in that vicinity, and make a living?

A. He can go on there with 160 acres, and he can make him a living there.

Q. Does that apply to all of this land that you have testified to, between Mabel and Camp Creek, that you have been over?

A. Yes, sir. I don't think there is a quarter section

in there but what a man can make a living on.

Whereupon on recross examination, witness testified:

Q. He could make a living just in the same way that you have made a living, wouldn't he, Mr. Hileman?

A. Well, a man can make a living on that piece of ground without working out.

Q. I don't mean working out, but by having stock and allowing it to run on the range in the summer time, and in the winter, why, he would have feed enough upon these open pieces that he could clear to take care of his stock through the winter?

A. Yes, sir.

Q. And that is the way he would make his living until he cleared an acre more?

A. Yes, sir.

Q. Now, did you ever clear any of this heavy timber land?

A. Yes, sir; I have cleared it.

Q. With big fir saw timber?

A. Yes, sir.

Q. How did you do that?

A. Well, I have helped dynamite them.

Q. And how big are these stumps that you have to dynamite?

A. Some of them was awful large—five or six foot

through.

Q. How big are the roots?

A. Oh, they are very large.

Q. And how much of that tree, you might say, is underground—take one of those big trees?

A. I couldn't tell you, but there is a lot of them underground.

Q. Pretty near as much wood under ground as there is above ground?

A. Oh, no; not that bad. But there is some.

Q. A very large amount? Those roots go down into the ground how deep?

A. I couldn't say; but some of them, I think I would be safe in saying, five to six feet deep.

Q. A fir tree doesn't have a tap-root, as a rule, does it?

A. Some of them has; a few of them go down.

Q. But the big roots that support a big fir tree are roots that branch out?

A. Yes, a ways; and then go down.

Q. How far from the tree do those roots run sometimes?

A. A good long ways.

Q. Probably thirty feet, don't they?

A. Yes; I have taken them out further away than

that.

Q. They are as big as your body, some of those roots are?

A. Not that far away; about like my arm.

Q. I mean, close to the tree they are as big as your body sometimes.

A. I don't think so out that far.

Q. Well, how far?

A. At from six to eight or ten feet.

Q. And under the ground?

A. Yes, sir.

Q. Sometimes on top of the ground as they leave the tree?

A. Occasionally you will find them on top of the ground.

Q. Now, after you have dynamited a stump, what is then left to do?

A. Is to fill up the hole.

Q. Well, how big a hole does it make?

A. It makes a pretty big hole in the ground sometimes.

Q. Pretty near put a house in, couldn't you?

A. Well, a small house, you might.

Q. What do you do after you fill up the hole?

A. It is ready for farming.

Q. What do you do with these roots when you get them out?

A. Pile them and burn them.

Q. Do you use donkey engines to pull these things together in a large pile there, and have a big fire in the winter?

A. No, sir.

Q. You have seen them do that down on the Nehalem, haven't you?

A. I have seen them do that down there on the mill.

Q. Haven't you seen them do that down on the Necanicum and all this heavy timbered coast?

A. No, sir.

Q. Take a donkey engine and pull them together, and get a pile of roots sometimes higher than this house and bigger than this building?

A. I use a timber block.

Q. Block and tackle?

A. Yes, sir.

Q. And a team?

A. Yes, sir.

Q. What do you have to do that for?

A. Put two or three of them together so I could burn them up.

Q. Have them into a pile?

A. Yes, sir.

Q. Get a pile as big as this courthouse?

A. Oh, no. Get three or four or five roots together and burn them up.

Q. Well, suppose you went in there to clear the land, with the timber on it, the first thing you would do would be to sell the timber, wouldn't it?

A. Well, I have cleared it on the McKenzie that we would fell the timber and burn it up, big logs, heaps of it.

Q. You wouldn't do that if the timber was worth a dollar and a quarter or fifty cents stumpage even?

A. I wouldn't nowadays.

Q. The first thing to do with this quarter section of fine agricultural land that is heavily timbered would be to sell the timber?

A. I would clear enough to make my garden.

Q. You could do that with a space as big as this room, couldn't you?

A. No, not that small. I would want an acre or an acre and a half.

Q. That wouldn't take long to get an acre or an acre and a half? You could grub that out and clear that out in one winter, couldn't you?

A. I could, all but the big stumps.

Q. After you had got the place for your house picked out, and got your place dug out for your garden, and then the forest was on the rest of the land, the

first thing that you would think about would be to sell that timber to somebody that would pay the best price for it, wouldn't it?

A. Yes, sir; and get it off as quick as possible.

Q. And then, after you had sold the timber you would have left the stumps cut up eight or ten feet above the ground by the timber people?

A. Yes, sir.

Q. Sometimes twelve feet above the ground?

A. Yes, sir.

Q. So as to avoid a heavy butt?

A. Yes, sir.

Q. They saw those off, don't they, those timber men?

A. Yes, sir.

Q. Go and get a ladder and put a man, and another one up on top of the ladder ten feet high, or a platform, and saw it off and let it fall?

A. Put in a spring board.

Q. A man takes care of himself and gets out of the way the best he can?

A. Yes, sir.

Q. And then you are left with the stump there, that is ten or twelve feet high sometimes?

A. Yes, sir.

Q. And you are left with all the small timber that

is not saw timber?

A. Yes, sir.

Q. And the brush?

A. Yes, sir.

Q. And there is brush and debris and stuff, and what do you do with that—burn it?

A. I slash it down, finish slashing, and burn it up.

Q. After you have burned it, then what do you do?

A. Well, I go to work, if I ain't going to plow it right away, and seed it.

Q. Seed it down to grass and get a little pasturage that way?

A. Yes, sir.

Q. You run it that way for awhile?

A. Yes, sir; until it runs out, and then I plow it.

Q. You cannot plow it very well with these big stumps in there?

A. I have plowed acres and acres of it.

Q. Land that has stumps?

A. Yes, sir.

Q. That is a good deal like plowing with what we call a peavine mower around these oak hills in Tennessee, isn't it?

A. Yes, something similar, the same thing.

Q. I have been there—I know.

A. I can show you hundreds of acres farmed, though, with all the big stumps in.

Q. You couldn't run the machine over it, could you, to cut it?

A. Cut it with a mower, drive around the stumps the same as you go around with the plow.

Q. Well now, that is about the way it is cleared, isn't it?

A. Yes, sir, that is the way the most of it is cleared up in the country—all of it practically.

Q. And the result is they haven't got very much cleared?

A. They farm it with the stumps in all the time.

Q. It has been about fifty or sixty years this country has been settled, hasn't it?

A. Yes, sir, somewheres in that neighborhood. Oh, it hasn't been that long.

Q. The first settlement in the Willamette Valley, four miles north of Salem, was in 1880, wasn't it?

A. I couldn't tell you that, sir.

Q. Eighty-two years ago. Well, there is wheat land in the Willamette Valley that has been farmed over sixty years, isn't there?

A. I don't think so.

Whereupon on redirect examination witness testi-

fied:

Q. These lands that you have spoken of as having been cultivated around the stumps, where was that land located, in the vicinity of these lands that you have described as being acquainted with?

A. Yes, my own place and Pickwitt's, and all of those places.

Whereupon J. P. CURRIN, called as a witness on behalf of complainant, being duly sworn, testified that he is sixty-seven years old; resides at Cottage Grove, Lane County, Oregon, and has resided there most of the time for forty-five years. He is a pharmacist and does surveying and teaching also. He was born in Virginia; has also lived in Creswell six years, which is nine miles north of Cottage Grove and is in the same locality. He has done county surveying, also for the Oregon and California Railroad Company, and government surveying. He assisted in the survey connecting the land claims to the line of the Oregon and California Railroad, the deeds for the right of way, in 1871, that is, where the lines intersected, crossed the land claims, he would take the distance back to the established point, referring to donation claims, homesteads and the government section lands; that is, checking up right of way matters, in connection with the right of way the company desired, with the public surveys as evidenced by donation land claims, homesteads, and other lands. This was prior to the time the track had been laid and the road constructed. He worked for the Company across Lane County perhaps a week

or ten days, from one county line north to the south line, excepting within the corporate limits of Eugene City. He has done government surveying—surveyed in six different counties—Benton, Lane, Crook, Grant, Umatilla and Union, and had a number of government surveying contracts. He was county surveyor less than a year—the latter part of 1870 and part of 1871. He is acquainted with the agricultural conditions existing in Lane County, and referring to Defendants' Exhibit 259, showing the lands involved in this suit in green markings, he is more particularly acquainted with the southern part of Lane County, including some of township 19. He is very little acquainted with the lands in Lane County north of township 19. He surveyed in the north part of the county on the donation claims or deeded lands more particularly, and surveyed 20 south 1 west, 22 south 2 west, and 23 south 3 west, and he thinks he has been over this country generally so as to acquaint him with the general character of the land. In his opinion thirty to forty per cent of that land is agricultural, and the remainder could be used for grazing or orchards. Quite a large per cent of it that is too rough to plow or to put into a field, might be planted in orchards. The rough land could go back to the forest. Some of the rough land is steep and rocky, and it would not be practicable for any other purpose. He has not surveyed on the railroad lands in the western part of Lane County, but he has been over that country, it is smooth, mountainous country. Speaking of what is along the road where he has traveled, he would think that land would average per-

haps a little greater per cent agricultural than in the eastern part, that is, a greater per cent of it would be agricultural land. When he surveyed these townships he found settlers in there. These townships were partly-surveyed, the heads of the valley, the three townships were surveyed and settlers were there, and settlers are in these townships now.

Q. Now, in 20 south, 1 west, Mr. Currin, would this land, in your opinion, if divided into 160-acre tracts, and not by quarter sections but by 40-acre subdivisions, would that support a family if a man should settle on that land?

A. Did you say 40 acres or 160?

Q. 160 in forty-acre tracts, but not by quarter section.

A. In a large majority of them they could, yes.

Q. Is that same condition true of the lands that you have testified concerning in Lane County?

A. Yes, it is. Perhaps a little more favorable in that township than in some of the others.

Q. Now, Mr. Currin, are all the railroad lands covered with timber? Are they timbered lands, all of them?

A. If you mean saw timber, I say no.

Whereupon witness testified that he applied to purchase lands from the railroad company in his wife's name about five years ago, located in section 17, township 20, south, range 8 west. His wife owns land in section 17, and one forty in 18. That land is agricultural and fruit

land, and is used for raising fruit and other agricultural purposes, and his wife has owned it five years. The character of the railroad land which his wife applied to purchase is hill and bench land. His wife's farm is the west half of the southwest quarter, and this he applied for is the east half of the southwest quarter and is contiguous to the farm of his wife. The land his wife applied to buy has some plowed land on it today, and there are about fifteen acres which could be plowed and put in. It was a timbered tract, but is cleared up. The railroad company contracted that land to a party and he cleared it off, took the timber off, and then changed his contract to another piece west of that, so it left that one clear and comparatively ready to plow. That was the land his wife applied to buy. The prior contract covered this land and it was thrown up and the party contracted for the forty west of the tract owned by his wife. He knows of one tract of one thousand acres of logged off land in Lane Conuty, which is situated from two to six miles southwest of Cottage Grove, which was purchased by M. H. Anderson for the purpose of using the land for agricultural purposes. It was his understanding that he paid five dollars an acre. Timber had been all over it—it was merchantable saw timber, but not very thick, only in patches some good timber. The timber in Lane County that is found high on the mountains, averages very well. Get higher on the mountain, it would be heavier, and it varies over the county according to locality. The altitude has considerable to do with it. There is quite a good deal of fruit raised in Lane County. It

is not a new industry in that section of the country; there are old orchards; there are a great many new orchards coming in, but there are more old. Commercially speaking, it is a new industry. He is acquainted with the fruit raising business in a small way. He thinks the mountain or rolling land is better to raise fruit on; it does better at higher altitude.

Q. What is your opinion, Mr. Currin, as to the effect upon the settlement of this country by the sale of the lands of the O. & C. Company to large timber holders and the withdrawal of the lands from the market?

A. I think it will hold the country back from settlement a great deal.

Whereupon, on cross examination, witness testified that he had lived in Lane County about forty-three years, residing all that time at Cottage Grove, excepting about six years when he was at Creswell, which is nine miles north of Cottage Grove. Cottage Grove is on the line of the Oregon and California Railroad, and is one of the old settled portions of Lane County. Quite a portion of the land around Cottage Grove and Creswell is in the valley. Quite a portion of it but not most of it, was taken up under the donation law. The valley at Cottage Grove is about a mile wide. The Willamette Valley narrows below there. There are some places below there that is narrower than it is at Cottage Grove. It opens out at that point, and then comes in above. The level land in the valley at Creswell is about a mile or more wide, but take some of the rolling land, take up the

swale there, it would be several miles. Including the foothills, the valley, he would think, at Creswell is about three miles wide, and at Cottage Grove about two miles wide. He was employed about ten days in connection with the right of way matters, checking up the corners or ties of the right of way deeds on lands deeded as right of way of the Oregon and California Railroad Company, in 1871, when they were locating the line through Lane County. He was working under a right of way man, and with that exception, he has never had any employment with the Southern Pacific Company or the Oregon and California Railroad Company. He includes in his classification of thirty to forty per cent of the lands which he had surveyed through or been over in Lane County as agricultural lands, lands that may be covered with some kind of timber, but which when cleared the soil would be good and sufficiently level to put to some agricultural use.

Q. And the balance of the land that you say might be used for grazing purposes is too rough to use for ordinary agricultural purpose?

A. Particularly steep.

Q. Yes. So that in making this classification of agricultural, you take into account the topography of the country as well as the character of the soil?

A. Yes.

Q. And really those are the two controlling elements that you use in classifying agricultural lands?

A. I do, yes, sir.

Q. Now, much of this land that you have thus classed as agricultural is covered with the heaviest timber in Lane County, isn't it?

A. Quite a good deal of it, yes, sir.

Q. That is to say, the better class of timber and the heavier stand grows, especially fir timber, where there is pretty fair soil? Isn't that true?

A. I think so, yes.

Whereupon witness testified that he thinks the saw mill men prefer timber which is from three to four or five feet thick at the butt. They will cut it perhaps two feet to four feet, and the height of the tree will run up two hundred feet in the larger timber. The largest tree that he has ever seen is one standing on the side of the road as one goes into Bohemia, which is said to be ten feet at the butt. He has observed that several times. He is not capable of answering what per cent of the total forests of Lane County would range from say six to ten feet at the butt. He is no cruiser, has never had any experience in cruising, and is not a saw mill man. The eighty acres of land his wife applied to purchase is railroad land in section 17, township 20 south, range 3 west, and that was about five years ago. It was land adjoining that owned by himself and wife about one mile north and two miles west of Cottage Grove. Hanson Brothers were the first purchasers of the tract which his wife applied to purchase. Hanson Brothers had a contract,

which he supposes was obtained from twelve to fifteen years ago, and they were three or four years in paying up. Hanson Brothers first had a contract on the eighty east of his wife, and after Hanson Brothers took the good timber off—they cut timber for railroad wood and when they got that off, they threw that up and took the west half of it, which was heavily timbered, saw timber. That is, these people bought the land under a contract and cut the timber off while holding it under contract for railroad wood and sold the wood to the railroad company, and then they made a change with the company and took the one west. They simply let the land go back to the railroad. They had no deed, only a contract, and that is the tract that his wife applied to purchase. That tract had been cut over for the cordwood that was on it; that is, about twenty-five acres had been cut over for cordwood purposes. The balance of the land gets up on the summit where it is brush and some oak timber, very little fir. It was chiefly valuable for raising grain and fruit in particular, when his wife applied for it. At that time the timber was already off, and it was very little work to take the stumps out. That had been railroad land about twelve or fifteen years before it was purchased by Hanson Brothers, and had come back to the railroad company in the way of which he speaks. With that exception, neither he nor his wife ever applied to purchase any railroad land, or made any application to file on any of these timber lands. He knows that a great many did, particularly around Cottage Grove, Roseburg and Eugene. Timber first became a matter of inquiry

as an investment and as a purchase, somewhere in the 90s in Lane County. There was a widespread depression in 1893 in business and in financial circles in Oregon and in the United States, and it was shortly after that that the timber inquiry began to develop. This demand or inquiry for timber investment was wholly among speculators. The company that got the information from him was in the East. He thinks the market began to become active in Lane County about 1900—it might have been before that. He thinks the timber was pretty much all taken about that time in his country. The timber became a matter of inquiry that was active and acute, in his judgment, and was at the highest tide of timber activity about 1900. The timber land was bought up for speculation and for investment by these timber people.

Q. Have you ever stopped to make an investigation to ascertain about how many acres of timber lands in Lane County that had been taken up under the timber and stone act, and under homesteads, and under preemptions, and under scrip, and in various ways, including the lands which have been purchased from the railroad company by timber investors and millmen, are now owned by mill men and timber men outside of the railroad company?

A. I could not tell what proportion. I think a large majority of our good timber is owned by those companies.

Q. That class of people.

A. Yes.

Whereupon witness testified that Booth-Kelly Lumber Company, Row River Lumber Company, Star Company, Brown Lumber Company, Chambers Company, Spriggs or Briggs Company and several others are manufacturing their timber and shipping it and using it and making business in Lane County. There are several other mills there. There are seven mills on that twenty mile road running to Bohemia, but some of them are not running. That railroad is the Oregon & Southeastern and runs from Cottage Grove into Bohemia, and has on it seven or eight mills which manufacture lumber to be shipped out of the state if they can get a market for it. He thinks Booth-Kelly Lumber Company has a large outside trade, and that these mills on the line leading up to Bohemia ship outside when they can get orders. He only knows by hearsay that the Hyland Lumber Company has large mills up in that country. The present way of getting rid of the timber on these lands is to get the timber off, manufacture and sell it in the markets of the world or use it for improvements. Before the land could be used for agricultural or horticultural or other purposes, the timber should be removed, so that there would be a period of time when the development of the country in the timbered countries is to take the timber off, manufacture and ship it and get the best price for it possible.

Q. Well now then, suppose that the company in this case, Mr. Currin, had sold these 160 acres to these

so-called actual settlers within the last seven or eight years, and had allowed them to pick the best quarter sections of timber in Lane County still unsold by the company, and had sold it to them for $2.50 an acre, or $400 for a quarter section, and had given them a good title, wouldn't they have had to sell the timber first to get the country developed.

A. I know of persons that have cut it down and burned it up.

Q. I know, but that would be destructive, wouldn't it?

A. It would.

Q. Wouldn't they first utilize the land by selling the timber to somebody?

A. It would be the better way, I would think, yes, sir.

Q. That would be the better way.

A. Yes.

Q. Well now then, wouldn't they be able, if they wanted to sell, to get a better price from timber investors and practical sawmill men selling the land outright. In this record in some cases the testimony shows as high as $5000 a quarter. Wouldn't that be the way most of these timber quarters would go—just as the homestead timber quarters and the cash entry timber quarters, and the entries taken under the timber and stone act have gone? Wouldn't they go to the timber people?

A. As a matter of finance, I think they would.

Q. Yes, that is the history of the way these things would go?

A. Yes, sir.

Q. And that is the way they have gone?

A. Yes, sir.

Q. As far as they have got title in the main?

A. Yes, sir.

Q. So that if we should sell every quarter section of good timber in Lane County to these so-called actual settlers, and give them a good title, the title to that land would pass in a year or two to the timber investors, wouldn't it?

A. In a majority of cases I think it would.

Q. And they would use it for speculation, or hold it for investment, or manufacture the timber into lumber to get their money out?

A. Yes, sir.

Q. Now, you say you know of a thousand acres of logged off land which was sold at five dollars per acre to a Mr. Anderson. Where was that land—this side of Comstock?

A. It lays east from Comstock. From the summit of the Calapooia mountains down to the Coast Fork.

Q. Yes, it was land that the timber was taken off by the Comstock mills and other sawmill men?

A. Yes, it was taken off by a mill at Latham. It

comes east.

Q. Taken off by a mill at Latham?

A. Yes.

Q. Do you know what these timber people got off these lands in the way of timber, and how long they were engaged in cutting the timber off and manufacturing it?

A. The Chambers Company are just finishing it up.

Q. How long were they engaged in that work of sawing it into lumber?

A. Perhaps two or three years. Not any longer than that.

Q. From whom did they buy these timber lands?

A. Well, from settlers principally.

Q. That is, these people that went in there and settled on these so-called timber lands, either by homestead or pre-emption or in any other way, sold it to a sawmill, got their money, and the sawmill company then cut the timber off, and they finally sold the logged off land to Mr. Anderson. That is the history of it, isn't it?

A. That is mainly the history of it, yes, sir.

Q. Now, what is Mr. Anderson doing with it?

A. It is an investment to sell out in smaller tracts for agriculture.

Q. He bought it on speculation?

A. I think so.

Q. Where does he live?

A. Cottage Grove.

Q. He is a real estate man, isn't he?

A. No, he is a timber man.

Q. Well, he is a man that bought a thousand acres, as a capitalist, at five dollars an acre, with the idea that he would subdivide it, and sell it to poor men who would go on there and settle? Is that the idea?

A. Men of limited capital, yes, sir.

Q. That is what I mean? Well, has he sold any of it yet?

A. Not that I know of.

Q. What kind of stumps are on this land?

A. Well, the timber is rather a poor quality, only some thick patches of it.

Q. Not as heavy as generally speaking?

A. Easily cleared. Some of it is already clear.

Whereupon witness testified that the elevation at that point runs up from the river to perhaps five hundred feet. He has an orchard up about five hundred feet that is immune from these frosts in the early spring and fall in Lane County. When one gets up 400 or 500 feet they are above the frost line. One can get into the frost line again getting still higher; they get into the fruit line when they get up about 500 feet. There is an intermediate belt where one gets above the frost line that is lower, and he thinks one will get to a place where they

are in the frost line above, but they have no land in that part of the county that would come under that class. He has never noticed any orchards or things of that kind, where the elevation was 1500 feet high. There is perhaps one exception to that in 20 south, 2 west, where there is on orchard, he thinks, in the neighborhood of 1500 feet, which is now twenty years old, on a donation claim; he thinks, in section 18. A good many of the settlers in some of these townships through which he has surveyed, had gone on to these unsurveyed lands and taken claims and were unable to obtain title, and therefore petitioned the Government to survey it, so they could perfect titles.

Q. And some of those are still living there?

A. Yes, sir.

Q. They have not all sold to timber people?

A. No, sir.

Q. These that are living there, most of them, are on the streams at the headwaters?

A. On it or near to it.

Q. How?

A. At a slight elevation, some of them, but near to the streams.

Q. They are not very numerous, though?

A. No.

Q. Now, you say that a large majority of the quarter sections, in forties, not in quarter sections but in forties, running along there in a T-shape, or so that the

forties abut each other, in the particular sections of the country that you have visited, would support a family. Now, you mean by that, after the timber was taken off that the man could make a living on the place?

A. Yes, sir, timber and brush; brush in particular.

Q. Well, if he had to confine his pasturage of his stock on a quarter section of this land that was timbered land, make a living that way, he would have a pretty hard time, wouldn't he?

A. On some of them he would, but on I think the majority of them he would not.

Q. He would have to sell the timber to get something out of it as he went along?

A. According to his means, of course.

Q. Do you have any idea about how many people in your neighborhood made application under this $2.50 an acre proposition to get some of these good quarter sections of railroad land that has timber on it—in your county or in your neighborhood?

A. I do not. I don't think there are but very few.

Whereupon witness testified that most of the railroad timbered lands were gone. Booth-Kelly Lumber Company bought up the biggest portion of them; also the Weyerhauser Company. Very few people around Cottage Grove, that he knows of applied for any of these railroad timbered lands. He did not do so, but was advised to do so. There were lots of fellows running around through Western Oregon about the time this suit was

commenced and before, in 1907 and 1908, trying to get contracts to locate people on these lands and to get one hundred dollars or more out of everybody to do it, and they induced a few there in their neighborhood, not many, to do that. These brokers were telling these people how much timber they could get in that way, he thinks that is correct. He went to school at Corvallis from 1868 to the summer of 1870, and graduated in the first class at the old college at Corvallis in June, 1870, which was the old Southern Methodist College preceding the Oregon Agricultural College.

Whereupon, on redirect examination, witness testified that the money that a man could get for the sale of this timber would materially assist in clearing up his land and putting it in a condition to be cultivated, if he should settle upon one of these claims which has timber on it. There are three eighties of railroad land in section 17, including the one adjoining his place, that would make very good homes for three families.

Q. I understood you to testify on direct examination that the majority of the quarter sections in the area that you were acquainted with would furnish support to a family—would be suitable for settlement purposes, in other words?

A. For some families it would, yes, sir.

Q. What do you mean by that, Mr. Currin? Please explain.

A. Well, some families can live on half what others can. People from Europe can live on one of our rough-

est quarter sections. It would require better land for an ordinary American family to live on.

Q. You mean that people in poor circumstances could make settlements on there and gradually develop the land?

A. I do; yes, sir.

Whereupon witness testified that the demand for agricultural lands has increased during the last ten or fifteen years, and the public lands have been almost entirely taken up in Southern Lane County, and there is no land there in Lane County that would be good farm land without clearing, that has not been taken.

Q. To your knowledge, have any people settled in this timbered area prior to the time when timber was valuable, and have cleared the land off, burning what would be now termed merchantable timber?

A. Yes, sir; there is a great many, quite a good many.

Q. Are those lands still used for agricultural purposes?

A. They are, yes.

Q. Occupied as homes?

A. Yes, sir.

Q. Now, Mr. Currin, if a man wanted a tract of this land for a home as a farmer, and wanted to engage in the farming business, what, if anything, would prevent him from selling the timber and retaining the title

to the land?

A. I do not understand your question exactly. Do you mean what legal reason would be in the way? Until a man has perfected his homestead he cannot sell it.

Q. I am not speaking of a homestead. I am speaking, if a man would buy a 160-acre tract of this land that had timber on it, merchantable timber, at $2.50 an acre, if he desired to engage in the farming business, I am asking you if he could not sell his timber and keep his title to the land, using the money that he would obtain from his timber to assist in clearing up the land.

A. Yes. There would be nothing in the way at all, that I can see.

Q. As a matter of fact, Mr. Currine, isn't it true that, as an agricultural proposition, this timbered area is a better proposition today than it was when these settlers first came in there and burned the timber?

A. It is; yes, sir.

Q. They now can sell the timber and use the money in assisting in clearing the land.

A. The timber is an asset now while it was in their way before, and it was an expense to them.

Q. How about the increase in the value and price of farming products, including stock, cattle, sheep and goats?

A. The market is better now, better prices than there used to be.

Whereupon, on recross examination, witness testified that the cost of living has increased, and he thinks that it is true that the great complaint of the agricultural world is that the cost of living has increased faster than the cost of the farm products, and he thinks that is a fact.

Q. Now then, you speak about these settlements on some of these timber lands with which you are acquainted that were made a good many years ago, before these people could sell their timber, and that they are still there. Most of these settlements were on the streams and foothills in Lane County, that you refer to, were they not?

A. I refer more particularly to those up on the side of the mountain, pretty high up, but on a smooth mountain side, where there are swamps and flats. Most all of it was susceptible to clearing and cultivation.

Q. Those people went in there, and had 25 or 30 miles of mountain range for whatever stock they might have?

A. They had outside range, that is correct; yes, sir.

Q. And the only available means of living and getting an income was from their stock that was thus ranged over the public lands and over the railroad lands, for miles and miles?

A. These I have reference to are farmers. They cultivate quite a good deal of land, and have their fruits

in particular, and raise their own hay, vegetables, etc.

Q. I understand, but they do not market their products? They feed them to their stock in winter, and feed their potatoes and garden stuff to their families, and then they make their money, if they do make any, from the stock business? That is the way they did it for many years?

A. A good many of them make their living more by selling vegetables and fruit that they raise on the ground.

Whereupon witness testified that there is a good wagon road into these places, and they come into town with their vegetables and fruit, haul them into town and sell to the people in Cottage Grove. Quite a good many people make their living that way. Cottage Grove is a place of about twenty-five hundred people, besides there are a great many mill companies there and they would sell vegetables to them; they would sell wood, a good deal of that, and ties. There is none of this stuff that they would haul over ten or fifteen miles; they are close in to the railroad, and these are the settlements—the mountain settlers—to which he refers.

Whereupon on redirect examination witness testified that S. C. Bruce, about June 1, 1912, representing the Railroad Company, requested him to lease this eighty acres of land that he tried to buy.

Whereupon W. C. TIPTON, called as a witness on behalf of complainant, and being duly sworn, testified, that he is sixty years old and resides at Roseburg, was

born in Missouri, came to Oregon in 1854 and has lived in Oregon ever since, about 18 miles east of Roseburg in Douglas County. He has been in the farming and stock business ever since he has been in Oregon. They located 18 miles east of Roseburg in 1855, and he has lived there ever since until within the last ten years, during which time he has lived in Roseburg. Referring to Defendants' Exhibit 259, he has been over the lands shown, involved in this suit, marked in green, from Myrtle Creek to Calapooia Creek in Townships 25 to 28, inclusive, clear through from near the summit of the mountains — all through these mountains there, and is acquainted generally with the railroad lands shown in that area, and became acquainted with them by riding over them after stock, buying and driving stock; that is, the country up and about Myrtle Creek is where he was buying stock. He is acquainted with the agricultural business, and the possibilities of agriculture in Douglas County and that vicinity. In passing through, and the like of that, he could not tell what was railroad land, what were odd sections and what were even sections, a man would just consider it as a whole. There is not one of these 160-acre tracts—not necessarily legal quarter sections, but also in tracts of "T" or "L" shape — but what a person and a family could make a living on them; of course, they would have to clear them up, a good many of them, but there are quite a number of quarter sections that have already open land enough that a person could make a living on, that is a family. He would say from sixty-five to seventy-

five per cent of these quarter sections would be suitable for a man to go there to engage in the farming business. There are settlers living in that country, both on the even and odd numbered sections, which are of the same general character. He could not tell how long these people had been living in that community; they have been living there a long time, some of them have, and some of them not so long. They have gone on to that land and cleared it up, some of them have, and made homes there. Lands that are not susceptible to tillage or cultivation, could be put to grazing, pasture land. It would not be necessary to take out the stumps to render the grazing lands of the best quality of grazing lands. He has purchased land of the company in Township 26 South, Range 3 West, when his father and he were in partnership. The land was bought in his father's name, and they bought in quite a lot below there, in Section 4. He could not just say how much they paid an acre for the land. They bought it at all prices. They bought one whole section, taking the whole section through, for a dollar an acre, and then they paid as high as three dollars, he thinks; he is not sure, but thinks, from $3 to $3.50 an acre was the highest. They bought qutie a lot at $2.50 an acre, and then a whole section at a dollar an acre. They bought that section about when the land was first put on the market. They made an application and offered to pay a dollar an acre for it, as much as his father would pay to the company, and they did not want to accept it, and sent a man up there to look it up; it was covered with oak grubs and there was

no other timber on it, only oak timber; when the man went back, the company wrote that they could have it for a dollar an acre; he thinks the man was George H. Andrews, located at Portland. That was the lowest price they paid; that land was very rocky, but it was fine grazing land; and they wanted it for pasture; it gave an outlet, and they wanted it for pasture, and that was all it was used for.

Q. Mr. Tipton, what is your opinion as to the effect of the railroad company selling the lands of the grant to large timber companies?

Q. The large timber companies in large tracts, and in withdrawing the lands from the market, failing to sell to actual settlers at $2.50 an acre?

A. Well, it has kept settlers out. It has been a drawback for settlers coming in and taking up the land, because if they came in and took up the even sections, it would throw the settlements so scattering that they could not have any schools, and could not get roads, nor anything of that kind at all. That is the main drawback. That is one thing that has hurt our country up there, is big land holders, in my opinion. That has hurt our country, the big land holders.

Whereupon, on cross examination, witness testified, that he and his father came to Oregon in 1854, when he was two years old. They came from Missouri, and his father and mother took a donation land claim on the North Umpqua; they each took a quarter section; they got here a little too late to take a half section each. They

got 320 acres under the Donation Act of September 27, 1850. His mother died on the donation claim, and his father came down to Roseburg and lived with his daughter a short time; he came down in the fall and died the next spring. His land is four miles right up the North Umpqua River from where the donation land claim was, and he owned 1,240 acres of land. Witness had a fine farm up there. He did not farm more than 100 acres, that is for hay and everything, the balance for grazing and pasturage. He bought that land about fourteen years ago, and sold it to George about eight years ago; it has not been subdivided since he sold it, but it has been sold now to another party, and all kept together. He owns a lot in the town of Roseburg, where he lives, and that is all the land he owns. While he owned this 1,240 acres he was in the stock business. It was about 20 miles east of Roseburg, and it was a stock country around there where he lived. It was really a stock country, but it was a good farming country, but people did not farm it so much. They used to farm it pretty heavy. They threshed in one season in particular 6,000 bushels of grain off of their place, about twenty-seven years ago; since that time the farm has been utilized mainly for grain enough to feed the stock, and for stock purposes. He is acquainted, in a general way, but not by legal subdivisions or by sections, with the lands lying east of Roseburg, between the Calapooia River and Myrtle Creek. Myrtle Creek is a branch of the South Umpqua and the Calapooia is a branch of the North Umpqua. There is an area on this map, Defendants'

Exhibit 259, marked in yellow, which were lands lost to both grants by adverse entries, that is, lands that were taken under the donation act, or homestead, or preemption act, prior to the grant. He notices the yellow field on both sides of the North Umpqua, as far up as Winchester and Glide; that land was all taken, and the railroad company got none of that except that shown by the small green spots in there. There is 330 acres of land that his father owned in there on the North Fork of the Umpqua, at the mouth of Oak Creek, and that was all taken under the homestead, or donation law, prior to the railroad grant, before the railroad ever came through there. He remembers when the railroad was built to Roseburg, but he could not tell the year, it was somewhere about 1881. It was extended a few miles south to Glendale after that, but it was quite awhile before the train ever passed through the pass, and then it went from Glendale to Grants Pass and stopped there awhile, and later on went through, but he could not tell how long it stayed at either place. The unsold lands of the company joins the Forest Reserve, on the headwaters of the Umpqua. Referring to Defendants' Exhibit 259, these that are in brown shown on this map, were lost to the company by reason of being in a Forest Reserve. He knows about that Forest Reserve, but does not know exactly where that line runs through there. He notices that above Glide and south of Hawthorne, on the Calapooia, there is quite a body of timbered land in there belonging to the company; and that some of this in green is still owned, and that in blue has been

sold. He understands the map shows the blue lands as having been deeded by the company. He notices that nearly all the land on Calapooia Creek is colored blue, and would be deeded, and the only green that is left is down towards Hoaglin and east and northeast of Glide, in that vicinity. Myrtle Creek is out where, on the South Fork of Myrtle Creek, there is a little post office called Nugget, and he knows that place. Around in that section there is a good deal of railroad land that is unsold, according to this map in green. He has been through these unsold portions in there, just riding through gathering stock. Some of this trail goes from Nugget over to what is called Deer Creek, and he has been through on that trail. Deer Creek comes into Roseburg; the trail goes through that country, and he has been through that trail quite often. In riding along, going back and forth, he would be going from Myrtle Creek back to Deer Creek and looking through. There are people living all through these mountains, that have a few head of cattle, and he was buying cattle and picking them up from ranchers in there that had stock to sell. He was buying them for George Cole, a butcher in Roseburg, and he has been at that for the last ten years. These cattle that the people on these ranches have, where they don't range on their own land, range out on the commons; they have these railroad lands and the even sections to range there, and the ranchers could pasture the railroad land, without the railroad company should fence it, and that it did not do. These ranchers fence what land they want to farm, what they want to

raise hay and the like of that; they have a few acres that would be fenced and the balance would be outside of the fence, what they want to hold. Most of these men have stock in there. They generally have cattle and some have sheep; they raise the cattle for the market, for the money there is in them. Some of these ranchers have as high as 50 head of cattle. He bought as high as 60 head and upwards of one fellow, who was a rancher, and had bought his place of 160 acres. He bought 60 head and had a good stand left; his cattle ran out on the commons. If all these railroad lands were fenced up and owned by settlers, he would not have much pasture, but other people could have. Most of this unsold railroad land there is pretty well timbered. There are no saw mills in that section in up there by Nugget. This territory that he is especially familiar with is about 25 miles from Roseburg and gets into the Cascade Mountains pretty well. These ranchers up there, most of them, settled not only on the headwaters of the little streams, but along the streams and on the uplands. There are nearly always springs nearly all through these uplands, and they are well watered. In going through that country he did not notice very many old cabins on the even sections, that had been abandoned, where the timber was; there are some, of course. There are some of these people up there that have lived there until their children got so they had to go to school, and they moved out just as he did. He lived on his ranch until his children got up so he had to school them, and he moved to Roseburg to school them. He knows of some sections

where they had built school houses. The railroad company has paid for over half the school houses and has paid half of the support of the school for nine months. There are not many settlements that have nine months school in the year, but the railroad company would pay half the expense for that nine months school, in some of these sections, and the railroad company had no vote on it. The railroad company contributes its proportion of the expense of building the roads that are built; if they have the land they have to pay the taxes. The difficulty of getting the roads through is a difficulty which the railroad company meets just in proportion to its holdings; and if people would settle on there, the people could put the roads through, and he thinks there is no reason why they could not get them through. They would have to pay taxes only on what they own; and they would have to contribute their proportion of the expense of that road to the extent of what they owned, unless it was paid out of the general fund. Most of these lands that are covered with timber could be used for pasture until the timber was taken off. The stock would run loose through the woods. They would have to be cleared for farming. In his judgment the soil and topography is such that about seventy-five per cent of these lands, that he knows of, could be made agricultural if the timber was removed; that is, it could be made ready for farming purposes after the timber was removed. It would not be necessary to take out the stumps to use it for pasturage. They would just cut the trees down, burn them up, get rid of the timber, and then sow the

grass in the stumps. One would not have to cut the big timber down; one could clean out the underbrush, sow the grass and have good pasture. Fir timber is tolerably thick and a tree carries its foilage the year around; it is evergreen. He can take a person on the ground and show him where he has sown grass in the heavy timber, which is as fine pasture as one ever looked at. He could pasture 25 or 30 cows on 160 acres of this timber land, by leaving the trees standing and sowing grass in among the trees, but would not keep very many just in the timber that way. Goats are the best to keep in the timber, and they eat fir timber pretty well, also hazel brush; they want a variety; they eat maple, hard woods and shrubs, and will clean them up and eat it up pretty well. It is not practical to have goats on every quarter section, but pretty much all of it. He has had a good many goats, but never had over 200 at any one time. When they had goats they were among the first to have them in their part of the country. He does not know how many goats there are in Douglas County now, he has not had any for a long time. They never combed the mohair, they sheared it off and sold it. Thirty per cent of the fleece of a goat has that wiry hair through it, but he does not know that this is discarded by the manufacturer. He does not know anything about the manufacture of it. They just sold their mohair at Roseburg, and he does not know anything about what was the loss to the manufacturer. He refers to the white Angora goat, the longer the fleece the better the goat is, but he does not know whether the longer the hair, the worse the fleece is.

Q. That is not the reason you sold your large holdings of 1,240 acres?

A. Well, no; I sold my large holding to get out where I could school my children. I was living too far away from school. But I do think that, if those large tracts were cut up so as people could come in and settle, it would be a better thing for our country.

Q. The first thing to do, though, with these timber lands would be to get rid of the timber and make some use of that, wouldn't it?

A. Of course, they would have to get rid of the timber.

Q. They wouldn't want to burn that up? They would want to sell it?

A. If they couldn't sell it, they could burn it.

Q. They wouldn't burn up a quarter section that was worth $5,000 for the timber?

A. There would be no need of it.

Q. They wouldn't do that, would they?

A. I shouldn't think they would.

Q. It would probably go to a timber buyer?

A. Of course——

Q. Just the same as the rest of it has gone?

A. Yes, sir.

Whereupon on redirect examination witness testified, that he was just speaking of the timber as going

to the timber buyer, just the timber, not the land. He had nothing to do except clip off the goat's hair, or wool, sack it up, tie it up and haul it off. They raised goats in that territory, and they ran out on the range and thrived on this growth found in this area. That is what they got these goats for, to run out on the range, slash off a patch of oak grubs or oak brush, and they would put the goats in on it. The large holdings of lands, in the locality of the railroad lands, are not fenced, and the railroad company is no better to the grazing man than the rest of the people. The reason they have only three months school there, is that there are not enough people living in there to keep up the school. The railroad lands are taxed the same as other lands, and the people of the county have not imposed on the railroad company in these matters, that he knows of; the methods of taxation are prescribed by law. He never knew the railroad company to construct any roads for the benefit of the people who lived there, or of their building any school houses, only where they were built by a tax, the same as the other people; the other people had to put up their part of the tax. They contributed what they had to contribute by law. Whereupon on recross examination witness testified, that Glide is two miles from his 1,240-acre place, and about three miles up on the North Umpqua, north of the section east of Glide. The North Umpqua ran through his place and cut one 80 acres of his place in two. His place was about six miles from Glide, northeast of Glide, on the river. He had two sections in his 1,240-acre tract, and owned some rail-

road land. He could not tell how long ago that railroad land was sold. John Livingstone bought a half section of it and witness bought half a section at one time. He cannot tell when Livingstone bought it, but he bought it when the railroad company was selling under contract, in payments. This was about the time the railroad came to Roseburg, in the early days, but he could not tell just when. Livingstone bought by contract and had not paid for it when witness bought it from him, and he had to finish out the payments on the contract. He had a pretty good range for his cattle on that place there. They ranged all over the North Umpqua and clear up in the Rock Creek country, on the railroad lands and even sections, too. They run in the open. Whereupon on redirect examination witness testified, that there are some abandoned homesteads, because others went in there with them with families, and they found they were on railroad land, and moved out, and then they could not stay on account that there were only a few families of them to keep up school, after they had built the school house and all. There was Mr. Comas, Mrs. Rooney, Mr. Lillie and Mr. Langworthy. These lands that these people located were on Rock Creek, and he thinks in Township 26. Hoagland is in Township 25 South, Range 2 West, and the lands there are good for agriculture. Lilly had, he does not know exactly, but thinks, as much as five or six acres in cultivation on his place before he left it when he found out it was railroad land. There is other land where they had some cultivation in, but he does not know how much. He hardly knows how

much it would cost to clear this land with the ordinary stand of timber that is on it. He has cleared a right smart of it, but he always hired the men by the day; but he does not think that ordinarily it would cost over $40 an acre. He cleared on his place heavy fir growth, between 80 and 90 acres of it. He hired the men by the day. That was about 30 years ago when they cleared that and it was heavy fir timber. The underbrush through this timber is mostly maple and hazel and hardwood. Whereupon on recross examination witness testified, that the land which they cleared was the only patch that they grubbed the underbrush all out and just as soon as they got it out they started the plow; as the plow hit a root they had men there with axes, and cut the roots out; by the time they got the ground plowed, all they had to do was hitch to the stump, the fir timber has no tap root, it sits on the ground. This fir grove was not young timber, but was big timber. They sawed all the timber and rolled it into the river. It was on the river bank. They had no saw mills, or access to do anything at all with it. This was about 30 years ago. He does not think it cost over $40 an acre, not more than that, if it did that. The wages for the men at that time were about one dollar a day; and one can now get all the men working on the ranches for a dollar a day, that is all they pay now, a dollar a day on the ranch, unless it is in harvest, and then they pay a dollar and a half a day with board included. He has never tried to grub out any of that heavily timbered land, except this grove, which they grubbed out and put in corn. That

grove was on his father's donation land claim, in below Glide on the Umpqua. It is not in the yellow field, shown on Defendants' Exhibit 259, but above that. That yellow field is on the south side of the river. His father sold his land before his death; he had sold everything. These people that settled on these railroad lands, settled there before it was surveyed and he thinks it must have been 12 or 14 years ago, but he could not say positively. He has seen some of these abandoned homestead entries, where the homestead entryman got his title, and the cabin is still standing; but he does not know if that land has passed to the timber companies. He knows of one place there where it has not passed to the timber company. There is Mr. Shoup, he sold his homestead, because he had to go out to school his children. That is on Rock Creek. He could not tell what he got for it, but Mr. Bellows in Roseburg bought it. He is not a timber man that he knows of; and he does not think he is in the timber business at all. Bellows does not live on the place; his boy owns part of a store in Roseburg. The property is not occupied now.

Q. You know, don't you, that all through the Coast Range and the Cascade Mountains there are homesteads that have been laid on these timber lands, and that the people, when they got the patent—single men, for instance, particularly—have sold the timber land to these timber companies?

A. Well, now, to tell you the fact, I don't know of one now.

Q. You cannot recall one personally?

A. No, I cannot. No, I cannot.

Q. But you have seen these cabins in there, haven't you, that are not occupied and abandoned, in the even sections?

A. Now, in the forest ranges, I know up there there is lots of cabins on nearly every quarter section, that the forest rangers took it from them, on account it was timbered. They claimed it was not agricultural land.

Q. They never got any title to that?

A. No, they never got any title to that.

Q. But I mean on the even sections, outside of the United States Forest Reserves.

A. Yes.

Q. Nearly all of the even sections, the title has been taken in the same way?

A. Yes, sir.

Q. There is no public land there any more?

A. Well, now, there is people that has taken homesteads right in back of our place.

Q. I am not asking you that, Mr. Tipton.

Mr. Rabb: Let him answer the question.

A. Their homestead cabins stand there.

Q. I understand, but all that even section land, the title has been extinguished by some kind of convey-

ance from the United States? There is no public land left there, is there?

A. Of the Government land, even sections?

Q. Yes.

A. Oh, yes, there is some, quite a little. Oh, yes, sir; there is a lot of Government land left not homesteaded yet.

Q. In that country?

A. Yes, in that country.

Q. That is not taken up?

A. That is not taken up.

Q. Is it timber land?

A. Timber on it, yes.

Q. I mean, is it saw timber?

A. Well, yes, sir; there is quite a lot of saw timber on it.

Q. The best, however, is taken up, isn't it?

A. No. In that Rock Creek country there isn't but two or three claims that is taken up, and got a title to it.

Q. The rest——

A. The rest stands there today.

Q. The rest is all Government land?

A. Yes, sir; the Government land stands there today.

Whereupon on redirect examination witness testified:

Q. That is outside of the forest reserve?

A. Yes, sir. Yes, sir.

Mr. Fenton: On Rock Creek?

A. On Rock Creek, they are outside of the forest reserve.

Q. Do you know why this land has not been taken up, Mr. Tipton?

A. Well, the railroad land is in there, and it throws them so far apart they cannot have any schools nor nothing. That is why it is not taken up. They cannot get roads made into it.

Q. Well, in your opinion, Mr. Tipton, if the railroad land passed into the hands of settlers, do you think the Government land in the even numbered sections would be taken up?

A. Yes, sir. Yes, sir; that whole Rock Creek country would be taken up.

Whereupon on recross examination witness testified, that they would have to clear up this land before they would get very much value out of it, unless they wanted it for stock. Whereupon on redirect examination witness testified, that clearing was required on the lands that were settled there in the early days, lands that have been settled on, and people are living on there now, and that is a condition that all settlers have to meet in that country.

Whereupon W. H. MILLER, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Gold Hill, Jackson County, Oregon, has lived in Oregon forty-one years, and was born in Josephine County. He spent his life at the home place, which was on the boundary line between Jackson and Josephine counties, and which was the east line of the farm that he lived on. He has been engaged in farming, mining and mercantile business, and is at present in the general merchandise business at Gold Hill, in Jackson County, and has become familiar in a general way with the character of the lands in Josephine and Jackson counties, and with the history of the industrial and commercial development of these two counties, since he has become old enough to observe these things. He thinks he is acquainted with the general character of the soil, climatic conditions, the lay of the land, and other conditions that enter into the usefulness of the lands in Josephine and Jackson counties. His knowledge does not extend to any great extent beyond these two counties, and he is not familiar with the southern part of Douglas County. He is familiar with the natural vegetation that grows in Josephine and Jackson counties, and with the use that may be made of that soil there for the growing of horticultural and agricultural products, and with the other industrial uses that may be made of these lands, their natural or artificial products, such as grazing, raising goats, etc. And based upon his knowledge of the general character of the soil of these two counties, he has made an estimate with reference to the

quantity of agricultural and horticultural lands existing among the present holdings of the Oregon and California Railroad Company in Jackson and Josephine counties. He took his list of railroad lands from the bill of complaint in this case, and he included in his general estimate townships 37, 38, 39 and 40 south, ranges 2, 3, 4, 5 and 6 west. He knows that a good portion of that land is in the most mountainous portion of Jackson County, while some of the other lands are in the lower altitude, where the mountains are not so high, and they include some of the roughest land in Jackson County. The lands in Josephine County on which he has made his estimate, he thinks, are not quite as rough land as part of the lands in Jackson County upon which he has made his estimate. He is familiar in a general way with the general character of the railroad lands in the townships mentioned by him, and has been over a good portion of the lands, most of them. The adjoining lands to these that he has been over, are comparatively of the same general character as those which he has been over. While he was not on these adjoining lands, he looked at them at a distance and believes they are just the same.

Q. Now, I will ask you to state what percentage of these lands with which you have become familiar and acquainted within those townships that you have named, referring now to the railroad lands, the description of which you got from the bill of complaint in this case—what percentage of those lands, I say, in your judgment are susceptible to the growing of agricultural and horticultural crops in paying quantities?

A. The estimate that I made, based on my judgment by being over the land and seeing a good portion of it, I estimate that there would be something like sixty-six per cent that could be used.

Q. That is, two-thirds of the land?

A. Two-thirds.

Q. State whether or not, in your judgment, if those lands were placed in the hands of settlers, the settler could, by making a proper use of the land, maintain himself and family, in tracts of 160 acres or less?

A. I think he could, yes.

Q. Are there any of the lands there of such character that a man could maintain himself and his family on less than 160 acres, referring now always to these railroad lands that are involved in this suit?

A. In some parts I think he could make a living on less than 160 acres.

Q. How much less?

A. I think I know of a few forty-acre tracts, one especially in my mind at the present time, that a man could make a good living off.

Whereupon witness testified that a settler there to make a livelihood could grow fruit, grain and small garden, and he knows of instances where settlers have been making a livelihood on similar lands in that same locality. His general estimate of the area of lands includes about 53,000 acres, and if he made no mistake, includes all of the railroad lands within the townships he

has named. He is familiar with the general history of that territory in those townships as to the sale and disposition and use of these railroad lands within those townships. He does not know about the date when the Railroad Company withdrew these lands from sale, but he knows they were taken out of the market, somewhere about January 1, 1903, he thinks it was.

Q. I will ask you to state whether the manner in which the railroad company at first sold these lands in large tracts, and afterwards withdrew them from sale entirely, has affected the development and settlement of that territory?

A. It has.

Q. In what way? Has it promoted settlement or has it retarded settlement?

A. No, it has retarded settlement.

Q. To what extent?

A. Well, to quite a large extent. In other words, there is a great deal of land, if the people could have bought, they would have improved it and made homes.

Q. I will ask you whether or not, in your judgment, if those railroad lands had been disposed of in 160-acre tracts to settlers, that territory would have been settled up and developed, and now be occupied by persons living upon them and developing them, cultivating them and living off from the products of the soil?

Q. What is your best judgment, Mr. Miller?

A. I think they would.

Q. I will ask you whether, in your judgment, the manner in which those lands have been handled by the railroad company, including the withdrawal of them from sale, has affected the development and settlement of the intervening even numbered sections?

A. I do not believe I can answer that question.

Q. You have no opinion as to whether the withholding of the odd numbered sections from settlement and development has had any effect upon the settlement and development of the even numbered sections?

A. I have not thought of it that way.

Whereupon witness testified that not all of the even numbered sections have been settled upon and developed, and he could not answer to what extent with reference to the railroad lands in these townships that he has mentioned the even numbered sections have been settled upon and are now occupied by settlers. There is some of it that has not been settled upon. He thinks that if the railroad land had been opened for settlement, the other land would have been settled up more than what it has been. In his opinion, the uplands in the foothills could be used for horticultural and agricultural purposes, and in his opinion, the lands available for agricultural and horticultural use are not limited to the valley lands. Some of their best fruit is raised on the higher lands, and the high lands are adapted for grape culture. They grow grapes among other horticultural crops. There are many different kinds of berries—raspberries, blackberries, strawberries; also fruits such as apples, peaches,

prunes, pears. Grapes have been cultivated quite extensively in some parts of Jackson County especially, and some parts of Josephine County. Some of the grape culture is an old industry; some of it is new. By that he means that it is old in some parts of that country and is new in some other parts. These lands are not all covered with timber. On some parts of it there is quite a bit of timber; on other parts the timber is not so good —it varies.

Q. Well now, does your answer with reference to the availability of those lands for settlement purposes, does that or does it not apply to the lands that have timber on?

A. It applies to both.

Q. So that before it could be used, then, for these other purposes the timber would have to be first removed?

A. Yes, sir.

Q. Have you taken into consideration those conditions and the cost of removing the stumps and preparing the soil for horticultural and agricultural use? I say, have you taken those conditions into consideration in your previous answers as to the availability of that soil of those lands for agricultural and horticultural use?

A. Yes, sir.

Q. Is your opinion in that respect wholly speculative, or is it based upon observation of yours as to

similar use of other similar lands?

Q. Do you understand what I mean, Mr. Miller?

A. I am not sure that I understand the question.

Q. The question is this: Now, in testifying as to the use that can be made of these lands for the growing of fruit and grapes and berries, is that wholly theoretical with you, or have you seen lands of that kind actually used for that purpose?

A. No, sir; I have seen them actually used for that purpose.

Whereupon witness testified that the climatic conditions in that territory are favorable for the growing of these crops which he has named. The elevation there in these townships varies from 1000 feet to 4000 feet, and he has seen grapes, fruits and berries grow at an elevation 2200 feet. He has taken the elevation into consideration in estimating the quantity of these lands that can be used in the manner testified to by him. It is rather hard to say how many acres of good fruit land is required to make a comfortable living for a settler and his family down there, referring to the good fruit land in these railroad lands; ten acres of good fruit land is enough, referring to the fruit land part of these railroad lands. He knows of instances where families are making a living on as low an acreage as that on lands similar in all respects to the railroad lands. In his opinion, some of these railroad lands concerning which he has testified, are as good as the best fruit lands around Grants Pass. There is quite a considerable quantity

of these railroad lands of that character—which is good fruit land; there is no large amount of it, but there is quite a considerable amount of it—good fruit land. Lands of this character are distributed throughout the different townships of the railroad lands. He does not call to mind any of these railroad lands that are actually under cultivation at the present time. He thinks the parties have bought them or have title to the lands, to that which they are farming, and they are not involved in this suit.

Whereupon on cross examination witness testified that a portion of Josephine County was created out of Jackson County, and it has been Josephine County ever since he knew anything about it. The line was straightened out at one time a good many years ago. Some portions of Josephine County are considered rather rough, mountainous country. A good portion of Josephine County is mountainous land, quite a good deal of it. His father owned 160 acres, taken up by him as a homestead before witness was born. It is about fifteen or sixteen miles from Gold Hill, but the nearest postoffice when he lived there was about eight miles. Grants Pass was their place of business, which is fourteen miles away. This place was on the Applegate, south, or southeast of Grants Pass. He does not know how long the Applegate country has been settled—it was before his time. Some donation land claims were taken up in the Applegate country. He thinks he said that sixty-six per cent of these lands with which he is familiar in a general way, could be used for agricultural or horticultural purposes

after the brush and timber is off. He thinks there is some of this railroad land with which he is familiar that has good saw timber on it. Some parts of the timber in Josephine County is pretty good for saw purposes, but not in that portion about which he is testifying, that is, those townships are not so very good. He became acquainted with these townships about which he has testified, by mining and prospecting, which he followed eighteen years, mining quartz and placer both, and locating mining claims and operating mining claims in the Missouri Flat country, the Applegate country, and Horse Creek country, but he is not interested in mines now. There are some pockets there, but it is not a pocket country. The mining is placer. Gold is all he had anything to do with. He mined off of some pretty good land. Some of the placer land they have, is some of the best agricultural land they have. He can show some very good farming land where they are quartz mining in the fields, and where they are farming all around them. They go down and find the quartz below the soil, and he can show one place of that kind. Gold Hill has a population of something like five hundred, and is on the railroad. Some of these grapes are shipped. Mr. Carson for one, owns the Redland Nursery on the Applegate—everybody knows his grapes, and he thinks he ships some of them to Portland. They are of different kinds. Some of them are Tokays. There are some grapes grown around Jacksonville, right on the top of the mountain, 2200 feet elevation. Jacksonville is about 1600 feet elevation; Ashland about 1800 feet, and Med-

ford about 1400 feet. The Rogue River Valley runs in elevation, he thinks, about 1000 feet at Grants Pass to about 1700 feet at Ashland, and practically speaking, the valley part, the low part, is all level land. There were lots of oak grubs and oak timber around Jacksonville and Medford at one time, but not very much fir timber. Part of the land between Jacksonville and Medford is the best kind of farming land, and has been for fifty years. These grapes grown there on the J. N. T. Miller place are not down in the valley, that is, up at Jacksonville, which is not in the valley but on the higher land, on the foothills. The slope leads five miles west from Medford up to Jacksonville, and J. N. T. Miller's place is on the foothills and extends up above. He knows the Hanley place there, and it is all level, black muck soil, except Hanley Butte. He does not know how much they want for the orchard land around south of Medford, but he knows there is some good orchard land, but he does not think they are selling it at $1000 an acre within two miles of Medford now. He has heard that they had sold some of it for that price, but he does not know it to be a fact. Some of the mountain lands are better fruit land than the low land.

Q. Well, now, answer my question. Do you consider that the lands in the foothills, up in these mountain lands, acre per acre, are as good lands as the Burrell orchard land, for instance, south of Medford that they get $1000 an acre for?

A. Not to take the whole, that is take all the land;

but that that is good is as good.

Q. Yes, if there is a shirt tail full there that is good, why it is good. That is what you mean?

A. No, sir.

Q. Well, do you mean to say that there is any considerable per cent of these railroad lands that are like the lands that I refer to around Medford?

A. No, I didn't say that they are like that Medford land.

Q. Well, that is what I am asking you about. Is there as much as one one-hundredth per cent of all of these railroad lands like any of those lands down there?

A. One one-hundredth per cent?

Q. Yes, one acre in the hundred equal to those lands of the Burrell Orchard Company, or of Johnny Olwell, or of old man Stewart, or of any of those men that own those fine lands around Medford?

A. I don't know what percentage, but I can show you just as good fruit, land will raise just as good fruit as the Burrell land or Olwell land, either one, and it is not in the valley.

Q. You will find it on the hills here and there in spots?

A. Yes, sir.

Q. Here and there in spots?

A. Certain patches, yes.

Q. You don't undertake to say, you don't want the court to understand, that all that land is of that character?

A. No.

Q. Or that any considerable per cent of it is?

A. No, I never said it was all like that.

Q. You don't want the court to understand that a large per cent of it is either, do you?

A. I want him to understand there is portions of it is as good fruit land.

Q. Small portions here and there, is that right?

A. Small tracts.

Q. Here and there through the grant that you are familiar with?

A. Yes, sir.

Whereupon witness testified that he has been engaged in the merchandise business going on four years. There are no vineyards out there where they manufacture wine, but no one can show any better vineyard than the Redland vineyard, which has a good many acres, he does not know how many. He does not know that he can name another vineyard in Josephine County, but he can in Jackson County. He knows that some of them in Jackson County ship their grapes. They used to manufacture wine in Jackson County and sell it, but he does not know whether they do now or not. It was not sold generally. He does not think there are very

many grape farms in Josephine County of the character of the vineyard of which he speaks on the Applegate. There are more of them in Jackson County. There is the one that he has named in Jackson County, but there are no other large ones; there are several small ones. Most of the farmers have a small vineyard for their own use, and do not sell many grapes. He is not a timber cruiser, and never estimated a piece of timber land to estimate how much timber was on a forty or a quarter section, not to try to be accurate at all, but he has figured on a few pieces somewhat, but never made a business of it. He tried to buy some of this railroad land quite awhile ago, but does not remember the time. He tried to purchase the land and the company would not sell it to him at any price.

Q. Did you make application on these blanks that were circulated around the country here four or five years ago trying to get people to make applications?

A. No, sir.

Q. Did you have any of these timber brokers apply to you to get you to send an application for $2.50 an acre to get a good quarter section of this timber land?

A. No, sir.

Q. You never did that or had anybody apply to you to do that?

A. No, sir.

Whereupon witness testified that Defendants' Exhibit 365 is somewhere nearly correct in its location of

the boundaries of Josephine County, Grants Pass, Applegate Creek and Gold Hill. He thinks that the map is fairly accurate of the streams, as far as he can see them, and the location of these towns, omitting the small branches of the streams. It looks to be about right so far as he can tell. He knows where Glendale is, but he is not acquainted in Douglas County. Jacksonville is shown on this map about five miles due west of Medford, and he thinks that is about right. He has been in the western or southern part of Josephine County, down at Waldo, but not very far off the wagon road. The lands with which he is familiar, with reference to Grants Pass, are southeast of Grants Pass, in the Applegate country, and about Wilderville and Murphy, and Davidson, and Kubli, and Applegate, which is in Jackson County. Applegate is a postoffice, and the Applegate Creek is in both Jackson and Josephine Counties. He was just prospecting through these lands, riding through them for the purpose of looking after mining interests, and was not looking for timber especially, just noticed the timber as he went through. He has driven stock in there very little; has done so some of the time, but he is not a stock man, but at that time he drove some stock to Williams Creek, a tributary of the Applegate, for the purpose of putting them on the range. It was then and is now customary for farmers who live down on the Applegate to drive their stock out into the mountains to range during the summer over public lands as well as the railroad lands wherever they were not enclosed.

Whereupon defendants offered in evidence Defend-

ants' Exhibit 365, which was received in evidence, subject to the official census reports, and subject to any corrections that might be made by the official figures of the census of 1910, which exhibit is hereinafter set out and described and made a part of this statement of the evidence and identified as such.

Whereupon on redirect examination witness testified that he did not know of any of these donation claims being located up in the hills in this general character of territory that he has described. They were mostly down in the valley proper. Some of these donation land claims ran back up on the hills a little bit, but they were mostly on the level land. He thinks the roughest part of Josephine County is in the south and southwestern part. He does not think that the townships about which he has testified, are in the roughest part of Josephine County. He is acquainted with the decomposed granite soils in Josephine County somewhat, and knows that it is being used quite a considerable for horticultural and agricultural purposes. He is not as familiar with the lands in Josephine County as he is with those in Jackson County. When he says that these fruit lands that exist in these railroad sections about which he has testified, are not like the lands around Medford, he means that the land is not level, and is of a different soil from that, a different altitude, and the soil is generally not so deep on the mountains as it is in the valley. The hill lands grow good fruit; wherever one finds land that is fruit land on the mountains it grows good fruit. It is a different character from the fruit land around Medford. He did

not restrict himself exclusively to fruit lands when he testified that two-thirds of the land covered by his testimony would be available for agricultural or horticultural use, and it is not necessary that it should all be fruit lands in order to be susceptible to settlement. There are sufficient quantities of this fruit land among these railroad sections to be available for practical commercial use, and he would say that about two-thirds of the quarter sections included within these railroad sections concerning which he has testified, contain enough fruit land and agricultural or horticultural land to support a settler and his family if properly used. The towns in the Rogue River Valley, such as Medford, Gold Hill, Grants Pass, Jacksonville and Ashland, are supplied with good schools. Some parts of the country where these railroad lands are situated have good country schools. Usually the lands are not opened up in the way that would attract settlers. It is not opened up by good roads. He does not know whether the road and school facilities would be considered sufficient at the present time. He does not mean to testify that this vineyard spoken of by him in Josephine County, is the only one in that county, but he means that it is the only one that he can name, of commercial value. He believes the better the land the better the timber. He knows of instances where the vacant railroad lands involved in this suit are of the same general character as those settled upon in the even sections adjoining.

Whereupon W. J. PENGRA, called as a witness on behalf of complainant, and being duly sworn, testi-

fied, that he lives in Lane County, Oregon, about three and a half miles east and a little north of Eugene, which is his post office address. He lives within a mile and a half of the main Willamette River, and he is fifty-five years old and was born in Lane County, Oregon. He has followed the stock business for twenty-five years, and the last four or five years he has been farming a little. He does not run stock now, to speak of; a few cows, some hogs, and a horse or two, and he raises a little hay, a few strawberries, some kale, a little corn, and such as that—diversified farming. He lived for a year and a half above Goshen, on what was known as the old Spores place, for five years, which is about seven miles north and east of Eugene. He has lived on no other farms in Lane County, other than those he has mentioned. While he was in the cattle business he had occasion to go around through the county, and bought cattle all over the county, more or less, and became pretty familiar with the general character of the soil there and the way it lays. He bought cattle in the Mohawk country, McKenzie country, Camp Creek, Fall Creek, the Willamette and Siuslaw, and has been all over that country more or less; and has been around over the county to some extent on other errands, in addition to buying cattle. His traveling about the county was largely in connection with his cattle business, and he observed the extent to which the country there is settled up and used for farming purposes, in a general way, referring to the parts of the county with which he is familiar. He knows that there are a lot of railroad lands

involved in this suit, in the Mohawk country and some in the McKenzie. He does not know where they all lay, or anything about that. He has never run any lines. He knows something about the general character of the soil through the foothills and in these little valleys, that he speaks of, and knows some of the Booth-Kelly holdings in the Mohawk basin, and a little on the Mill Creek country, but not a great deal of it. He does not know anything as to the railroad lands particularly. He knows as to the lands that lay near the valley along the foothills there, and does not know whether they are railroad lands or government land, or what they are. He does not really know anything about the townships, but he could point out the little streams on the map, Defendants' Exhibit 259. He has been on Mill Creek up perhaps a half or three-quarters of a mile above the Wendling Mill, and that is as far up as he has ever been on that stream. He has been on the Shotgun and in above Shotgun and across the ridge, and down to the Calapooia, McGowan Creek, and some of these little creeks, and all of those little tributaries that come in from the west; and has been on almost all of those little streams that flow into the Mohawk, and also on the east. He has been across the mountain on the McKenzie river. He has been off the stream, going both sides, principally on the north side of the stream. He has bought cattle on Lost Creek, the Pleasant Hill country, up on the Coast Fork, out in on the headwaters of the Siuslaw, and down on the Siuslaw and along the Coast; and along the Siuslaw westerly through Lane County to the Coast.

He has not been up and down the main Siuslaw River, but simply along the road down as far as Mapleton, at the head of the south tide, and some of these little creeks that come in there. In the Mohawk country, he thinks as far back as he has been up those creeks and over those little ridges and breaks, he would say that perhaps fifty per cent of that would be suitable for agriculture when the timber and brush is taken off. The balance of the land there could be used for grazing. Some of that land is fairly good for grazing. He does not know anything about the odd or even sections, but he speaks of the land as a whole and with reference to the country generally. He has seen a little of the difficulties that encounter the settler in the removal of stumps and clearing of land of brush, and preparing it for cultivation; but he has not had any experience in the hills himself, but has had some experience elsewhere. Some of the land that he had experience with was formerly heavily timbered. Usually on the best soil one finds the best timber.

Q. Now, bearing in mind your previous testimony as to the proportion of this land that might be used for agricultural purposes, I will ask you whether, in your opinion, based upon your own experience individually and also upon your observation of the experience of others in that vicinity, whether in those localities with which you have become familiar, a settler could maintain himself and family upon 160 acres of that land?

A. Well, yes. It would depend something upon the man, I think.

Q. That is true in all new countries, is it not, Mr. Pengra?

A. I think so, yes.

Q. It is only the hardiest who really reduce new countries to cultivation—isn't that true?

A. Yes.

Whereupon witness testified, that the lands along the Siuslaw, back from the river, are very abrupt, a great deal of it. In the upper part of the Siuslaw country they are not so steep, not so abrupt. He does not know much about the lands along the main river back from the river, except on the headwaters of some of those tributaries of the Siuslaw. Some of those lands are good agricultural lands, while there are a good many of them that are covered with timber, some of them are under cultivation. As a general rule lands that are covered with good timber are susceptible to cultivation. Whereupon, on cross examination, witness testified, that he had lived in Springfield a good many years, that as a stockman going over the timbered portions that he has mentioned, he was buying cattle. The people he bought from ranged their cattle in the mountains, principally in the brush, and ranged them over the outside lands, principally, adjoining their places and he supposes over the railroad lands the same as the others. He does not know how much country these cattle did range over, sometimes the cattle would range back for two, or three, or four miles. He does not know that the cattle during part of the season ranged in the mountains. He thinks

they would turn the cattle outside and let them go with their calves and get them back in the fall, that was the common way of doing it. Some of these cattle were branded, some were ear marked. They were branded, or marked, with some mark. He does not know that these people made their living altogether that way. They all had a little stock; some of them made shingles and cedar posts and had a deerskin or two to sell occasionally. They had gardens and orchards. Most of these people were on the streams and some of them were on the benches back of the streams, but most of them were on the streams. He had noticed abandoned claims in his travels through this timbered country, but he does not know whether they were on even sections or on homesteads, or whether they had gotten title or not. A good portion of the timber in that country was good merchantable timber and some of the Siuslaw country had very fine timber, and some had no timber at all, part of it having been burned off. The fifty per cent of this land that he had stated was agricultural, in the territory over which he had been, includes such land as has soil that could be put to some kind of cultivation if the timber were off, and that is the way he classified it. There is none of that land that is extremely level, it all has some little slope to it, there would be benches and then a little steep place, and then a bench, maybe a little slope off to one side or the other, whichever way the land happened to lay. He could not say that fifty per cent of the railroad land would be agricultural, but he thinks all the land that he passed over, whether even or

odd sections, would be about fifty per cent that would be agricultural lands, when the timber is removed. Whereupon on redirect examination witness testified, that the general character of those foothill lands are rolling and broken, and whether the hills are large or small depends on how near one comes towards the summit of the ridge; in some instances the ridges lay near the valleys and the hills would be more abrupt. Where the main ridge breaks back, the hill would be more gentle in its slope. While it would not perhaps be level there may be level places, practically level. But there will always be some slope to it; there will be little benches, ravines and hills. In some instances in the unsettled portions of Lane County the roads follow the streams; as a general rule though the roads follow the little ridges. In making trails through these foot hills, it is easier to make a trail over a ridge, or follow a ridge and backbone of a slope that comes down from the ridge than it is to follow the creek, from the simple fact that there is more or less fallen timber in the creek bottom, and the ridges are more accessible. These roads are not for the most part so abrupt as to be inaccessible. The lands that he passed over have been along the Mohawk Valleys, or near the Mohawk Valleys. He does not know whether the Booth-Kelly Lumber Company owns any part of these lands or not, but he supposes they do. They do at Wendling, he knows. He does not know anything about the description of the railroad lands, nor where they lay. In this general territory, concerning which he has given an estimate of the agricultural lands, he

does not know what are or what are not Government lands, railroad lands, or Booth-Kelly lands, or what the ownership of the lands may be.

Whereupon W. A. RENNE, called as a witness on behalf of complainant, being duly sworn, testified that he is forty years old; lives about three miles west of Walker Station, in Lane County, Oregon, and is a farmer by occupation. He has lived in Oregon since the winter of 1887-88, and before that lived in Illinois. Referring to Defendants' Exhibit 259, he is acquainted from Creswell west, on Camas swale, the country that is situated over on the headwaters in the Siuslaw country. The Camas swale is around Creswell and west. Creswell is in township 19 south, range 3 west, and the Siuslaw country mentioned by him is west of Creswell, extending over as far as Loraine, but he has not been west of Loraine to speak of. He has been south of Loraine as far as Drain, but has not been over the lands of the company northwest of Drain to speak of, but has been over these lands indicated in green north and east of Drain; from the railroad clear back down to Creswell, in this general community, in townships 19, 20 and 21 south, ranges 3 and 4 west, and practically he has been over all of it, hunting and trapping. He has lived at Walker about twenty-five years, and engaged in farming. He owns one hundred and twenty acres altogether, which is about three miles north and west of Walker. One forty is in section 30, one in 29, and one in 32, all in township 19 south, range 3 west. He has about six acres that he plows now, besides possibly an acre for

garden, such as that, and his land is all under fence. He is acquainted with the agricultural possibilities in that vicinity concerning which he has testified, also about the possibilities of the soil in producing crops, and the necessity of clearing.

Q. Now, in your opinion, Mr. Renne, what per cent of the 160-acre tracts of land in this area that you are acquainted with would be suitable for settlement; that is, that a man could go on there and farm them and make a living?

Q. On a 160-acre tract, taken by legal subdivisions of forty acres, but not by a quarter section?

A. I understand you he is to take four forties that are adjoining each other.

Q. Yes.

A. It don't make any difference in what shape, or anything like that?

Q. No.

A. Well, I think in this territory that I have been over, that 75 per cent of it could be utilized that way.

Whereupon witness testified that a part of this territory is settled upon by people engaged in agricultural pursuits and raising fruit—is quite a fruit country, and there is a large orchard there in that vicinity. He could not say positively as to the sale of orchard lands around Creswell, only what he has heard, that they are selling at prices ranging from $400 to $700 an acre. He makes a living on his place, and he thinks his place is just

about an average with the ordinary 160 acre tract that a man could select in this general country. He raises grain, hay, fruit, vegetables of different kinds, on his place, and the conditions as to the other lands in this area are the same as it is on his land. He keeps stock on his place too, goats, sheep, a few hogs, couple of cows, and chickens.

Q. What effect, if any, Mr. Renne, has the failure of the Railroad Company to comply with the conditions in the grant relating to the sale of these railroad lands to actual settlers at $2.50 an acre—what effect, if any, has that had on the development of that country.

A. I think if all of this land could be taken as in a body close together, different families, so as they would have neighbors close, etc., it would have been settled up, the most of this land would have been taken. It has kept the roads from being built into these places, schools, churches, etc., and if I understand the school law, it takes so many pupils to have a country school started —ten, I believe—I would not say positively but six to start a school, before they could have school.

Q. Don't the laws of Oregon require them to have ten pupils in a district before they can organize a school, and have to have six pupils in order to maintain the school?

A. That is my understanding, yes.

Whereupon witness testified that at Cottage Grove up the Coast Fork—that is what it is called in his

country—as far up as Black Butte quicksilver mine, he is acquainted with the lands shown on this map, Defendants' Exhibit 259, marked in green. It would be south and east as far as Black Butte mine, and then as far north from the Black Butte mine to Row River, which leads in east of Cottge Grove, and empties into the East Fork. This railroad that leads out from Cottage Grove follows up Row River, practically towards Bohemia, and runs through townships 21 to 22 south, in ranges 1 and 2 west, as shown on this map. He has trapped all over that country one winter, as far south as the Coast Fork, which goes up towards Black Butte mine. Black Butte is a quicksilver mine, but it not up towards Bohemia, it is south and west. He supposes the marking "Black Butte" in 23 south, range 3 west, is meant for Black Butte. The Coast Fork is the river upon which the Black Butte mine is situated, or just a little south of it. He thinks that territory there will average about the same as the other territory of which he has first testified with reference to the possibility of agriculture and suitableness to settlement.

Whereupon, on cross-examination, witness testified that he did not exactly get his knowledge of these lands by going over the streams and trails, but all over through the woods. He got it while he was trapping. He is not a cruiser, or a timber man, and he has not attempted to look at this land with a view of ascertaining how much timber there was on it. Part of this unsold railroad land is heavy timber, and other places not so much. He does not know what these heavy timbered quarter sections

are worth in the market; he has no knowledge on that subject. He owns 120 acres of land. Forty acres of it was railroad land which he bought from the company. He made application for the forty acres in August, 1901, and has paid out on it. He wrote to the company, and he paid $152 cash for the land. They listed it to him at $4.00 an acre on credit. It was timber land in part, fir and brush, all kinds of timber, pretty fair saw timber; part of it is still there. He has not sold any saw timber from his place. It is not too far away for sale of the stumpage for timber. It is about three miles from Walker. There is no sawmill right at the store. There is a sawmill west of Walker, and there used to be one at Saginaw—is yet, but these mills are not running now. The Booth-Kelly mill is away off east of Saginaw in the woods, and they flume their lumber down to Saginaw after it is sawed, and their planer is there. The mill would be quite a distance from his place. The saw timber that is on his land could not be very handily marketed and sold at Saginaw. He has never been offered a price for any of his saw timber and never offered it for sale himself. He has about six acres on his 120 acres that he plows, besides a garden consisting of probably an acre. He has raised on these six acres wheat and hay, a little hay on that, and he raised seventy-five bushel of wheat, machine measure, but did not raise any oats or barley or corn. He raised some hay on this, possibly three or four tons; timothy, velvet grass or mesquite, and some wheat mixed with it. He sowed this as an annual crop. He keeps two

cows, and has seventy-one goats at present, and they range on this brush land of his. He has owned his goats about six years, and sells the mohair from them. If he remembers right, they average somewhere between three and a half and four pounds of mohair per head. They are Angora goats. He got his start from a neighbor about a mile from where he lives, who had fifty head. His neighbor sold his place and moved down near Portland, and witness bought his goats when he sold out. Nearly all his neighborse in the country run a few goats. He has several neighbors located in there within a mile and a half or two miles. He could not say how many are settled within a township there, excluding the railroad and excluding settlements right along the railroad, and excluding Walker and the sawmill, and things of that kind, but there are quite a good many, two or three miles from the railroad, in the foothills, and some pretty good land, some hill land, and some fir timber. Some of these railroad lands are further back in the mountains, and some are not. Some are adjoining that that he bought; there are forty acres adjoining him right on the east, which will average with what he bought. Part of it is timber. This forty is all there is right in there. He has not talked with counsel for the Government about these drawbacks of schools and roads, and lack of settlement on these railroad sections affecting the development of the country. He looked up the school laws himself to see how the school law was. He used to be a director at his school and came to know in that way. He thinks that they can vote a school tax on these railroad lands if they wanted to support these

schools by voting a tax on the other lands just the same. These railroad lands are unfenced, and he supposes they could be pastured if one would want to turn out their stock on the range. A good many of these ranchers that are further back on the hills than he is, have a little stock, and they turn their stock out to range over any unfenced lands. There is pretty good timber on a part of these railroad lands in Lane County. Timber became an item of consideration in value for the timber alone, something like seven or eight years ago, he would judge, but could not say positively. The timber demand has been pretty active in Lane County.

Q. Now, do you know of some homesteads taken in these timber lands, by single men and others, taken for the timber, and then after they got their title by proving up or commuting, paying the cash in fourteen months, they sold out to timber people, got their money, and got $3,000 or $4,000 for them? Do you know of such instances as that in your county?

A. I know of one fellow that bought a tract. Now, I wouldn't say how much there was in it, possibly 160. And then he sold it out, but I couldn't say what he got for it.

Q. Well, he bought a relinquishment, did he, and then laid out a homestead on it?

A. I think it was Government land. He first homesteaded it, and then bought it in in a certain time.

Q. A certain time?

A. Yes.

Q. That is to say he entered it probably, and then commuted by paying the cash?

A. Yes, sir, that is the way he got it.

Q. And then he turned around and sold it?

A. He sold it afterwards, yes, sir.

Q. How long after he had commuted did he sell it? How long afterward?

A. I couldn't say whom he sold it to, or how long after.

Q. You know it was sold for the timber that was on it?

A. I don't know whether it was for the timber, whether they wanted it entirely for that, or for the land besides.

Q. Was it good timber?

A. Pretty fair timber, yes.

Q. Where was this quarter section?

A. It was in west of Walker.

Q. How far west?

A. I should judge five or six or seven miles; somewheres along there.

Whereupon witness testified that he thinks that principally all of the public lands of any particular value in Lane County have been taken. He supposes that they have been taken under the homestead or timber

entry, or in some way, by scrip, and the titles obtained from the Government in that way. He thinks that Lane County has as much timber as any county in Western Oregon. This timber is mainly away from the old settled portions and in the foothills adjoining the valleys, and in the Cascade Mountains and Coast Range. There is not very much of it down in the valley. He has never been a timber cruiser, but has been a farmer in the way of which he has spoken, and has also been a trapper for martin, coon, mink, skunk, anything like that that he could catch—wildcat, cougar—for the sale of their furs and hides. He quit the trapping business about five or six years ago. Before that he could trap successfully. These fur-bearing animals got pretty well trapped out in that locality, they were driven farther back into the mountains.

Q. Well, assuming that the record has that statement—we will not take the time to go back and find it—assuming now that that statement of fact is true, that these quarter sections have been sold at from $3,000 to $5,000 per quarter, good timber-lands in Lane County, that is, $20 to $30 per acre, and that there was no means of disposing of the timber except by cutting it down and burning it up, now, what would a farmer pay for that quarter-section in that situation, for the purpose of making a home of it?

A. I know of land there that, if I was able to and so as I could, I would pay $10 or $15 on acre for any day.

Q. And burn the timber?

A. Yes, sir, and burn the timber. That is what I have done with what I have cleared up.

Q. And you would do that, and then grub the land out?

A. All but lots of the large stumps; take out the smaller ones, or run goats on them and let them kill it out, and then rot out.

Q. What would you say open land in the Willamette Valley can be had for, that is absolutely clear today, and not influenced by the location of a city near it, like Eugene, but ten or twelve miles away from Eugene—old farm land, donation land claims—what would you say that could be bought for, or do you know?

A. I couldn't say positively just what it could be bought for, no.

Q. Don't you know that the bulk of the land in Lane County that is in the old settled portions of it, taken up under the donation law, fairly well improved and fenced, can be bought all the way from $50 to $200 per acre, at the present time?

A. I couldn't say positively.

Q. Well, isn't that about your recollection of it?

A. Something like that, I suppose.

Q. A great deal of the land can be bought for $25 an acre, where some of it is brush and hill, and covered with old improvements, and where there is about half

of it in cultivation. Isn't that true?

A. I think so.

Q. Well, a man would be better off to go down and buy some of this land than to go back into the mountains and buy a timbered piece of land, unless he wanted to buy the timber, wouldn't he?

A. Well, there is lots of it that would be better land than this cheap land would be, after he got it cleared, that is back in the hills.

Q. I know, but he would pay two or three times for it in getting the timber off, if he couldn't get the money out of the timber, wouldn't he?

A. Well, he could kill the brush and such as that out with goats and stock, and be making a profit off it while he was doing this.

Q. But he couldn't very well kill a fir tree that was six feet at the butt with a goat, could he?

A. Not large ones.

Q. A goat don't do much on a fir tree that is six feet thick at the bottom, do they?

A. No, sir. But you take small trees, a goat will kill it out.

Q. But the goat doesn't do anything to a sawlog or sawtimber?

A. No, sir.

Q. He browses on the shrubs and short brush?

A. Yes, sir.

Q. And will climb a stake and rider fence to get to it?

A. He will do that, too.

Q. It don't prefer the evergreen when it can get the other kind—hazel brush and things of that kind?

A. Well, he will take a bite of one kind, and just keep going that way—first off this and then that, and all over.

Q. But he don't bite fir trees, as a rule?

A. I can show you lots of them that has been bit in my pasture.

Q. I know, but he didn't bite a fir tree, that is a saw tree?

A. Oh, no. Fir brush I am speaking of—small.

Q. Oh, just little fir trees that are six or eight feet high?

A. Yes, sir.

Q. He would nibble at a limb as he went by to get a hazel brush?

A. And make a mislick at the hazel, and get the fir.

Q. Yes, but when it comes to clearing saw-timber, you don't use a goat to clear saw-timber?

A. A goat don't like saw-timber, no.

Q. He don't want to eat sawlogs?

A. No, sir.

Q. So all this talk about a goat clearing land is, that the goat is used to kill the shrubbery, and is useful on oak grub land after the oak grubs are cut down and the sprouts come up, to keep the oak grubs from growing up again?

A. Oak grub and vine maple and hazel—all such hardwood as that, that you will find in the hills any place.

Q. Yes, wherever you can cut the oak grub down, or the other hard woods, there are sprouts come up the next year, and the goat is good to keep that down, and will finally kill that tree?

A. Yes, sir.

Q. But it don't have very much to do with a fir tree—I mean a saw tree?

A. No, sir.

Whereupon witness testified that he sold his mohair last spring for thirty-seven cents, and the average price for the last five years has been about thirty cents, running from twenty-five to thirty cents on an average. He does not know how many goats there are in Lane County. He is a man of family, his family lives on these premises, but the children do not go to school; they are not old enough for school yet. They have a school there that he could send them to.

Whereupon on redirect examination witness testified that four dollars was the price placed upon this forty acres

of land that he purchased from the Oregon and California Railroad Company, but that he got a five per cent discount on that price by paying cash. This land was rolling, and adjoining the land that he is now living upon, and he is using it for pasture and such as that. The other forty-acre tract that he applied to purchase from the Railroad Company and was refused, adjoined just east of the one that he purchased. His father lives in section 30, township 19 south, range 3 west; the same section that the homestead of witness is in. His father came to Eugene in the winter of 1887-8, and lived in Eugene a year and a half, or right close to that, and then they moved out on the homestead of 120 acres. His father proved up on his homestead and has been living there ever since. His father's land was rolling, contained some timber, and some of it had to be cleared. Witness was about fifteen or sixteen years old when his father took up his homestead. The family consisted of six children besides his father and mother. Witness was next to the youngest of the children. His father made his home and living upon his homestead. When they put the house on his father's homestead they had to cut the brush out in order to get room enough to put a house in there. His father's place would average about the same as the other lands he went through in that country. It was not necessary to grub all the stumps out before grain can be sown on land that contains a timber growth. The six-acre tract that he is farming has large stumps left in the field and he plows around them, and is raising crops there every year, wheat and hay, and such as

that. He cuts his hay with a mowing scythe. Where the clearing is older the ground has been grubbed out, except the large stumps, and that is cut with a mowing scythe. He cut his wheat this season with a binder, or rather his neighbor did for him, around these stumps that are in the smaller field. His father has about ten acres of land under plow on his place. Stumps are removed by settlers in that community in various ways. Some blow them up with powder, and others by what they call pitting, burning them out; get a fire started around the base of the stump, and keep piling on stuff until one gets a good fire started, and then cover it over with dirt, and keep it covered until the stump burns out. That is called char-pitting, and involves only labor, attention to the fire after one gets it started, that it don't break out; keeping it covered, smoldering in there until the stump has burned out. This soil is productive.

Q. About what would be the average of land that could be made susceptible to plowing on this tract that your testimony has covered, that is, on each 160-acre tract? I am not speaking now of your homestead, Mr. Renne, but I am speaking of the entire tract that your testimony in chief covered.

A. You have reference to the amount that actually could be plowed, if it was grubbed or cleaned up?

Q. Yes.

A. I should judge about thirty-five or forty per cent of it, right around there close.

Mr. Fenton: What do you mean? Right around

close to those figures, or close to your place?

A. Close to the figures—35 or 40 per cent of the land.

Whereupon on recross examination witness testified that he could not state the year that his father took up his homestead, but that they lived in Eugene during the winter of 1887-8, remained there a year and a half, and then moved out on the homestead. He has not figured out what year his father took up his homestead, but if it was in 1890 witness would have been about eighteen years old at that time, and was the next youngest child in the family, and there were six children, three boys and a girl older than himself. He could not say as to whether the older children were of age when his father went out on the homestead. A sister was next older than he, and there were three brothers older than this sister, and he supposes there were two years' difference in their ages, but could not just say, and the three brothers were practically all men grown when his father took this homestead, and stayed with his father on the place, assisting him in the work, and did not work out very much. These brothers slashed the land, rolled the logs together and burned them, and did such work as that. He had one sister two years younger than himself, who lived on the place with his father and mother when they went to the homestead. The girls helped work around the house, but did not work in the field. His father now has on his homestead about ten acres that can be plowed. The balance of the land is brush and timber, which he uses for pasture.

Q. So that your father, with three grown sons and yourself, 18, or about that, after being on that homestead twenty-two years, has succeeded in clearing ten acres? That is right, isn't it?

A. Well, it didn't occupy all these twenty-two years to clear that.

Q. I know, but that is the fact? You have succeeded in clearing ten acres?

A. Yes, sir, that is what is cleared there.

Whereupon witness testified that his fathers' homestead is about four and a half miles from the railroad by wagon road, the nearest station being Creswell. Walker is about the same distance. Creswell is just a small place. He does not know its population in 1910; probably about four hundred people living there in 1910—he couldn't estimate. Creswell is his father's trading point. Witness trades at a store at Walker; there is just one store and a few dwellings and a post office at Walker.

Whereupon on redirect examination witness testified that his father's place has been under cultivation, he should judge, ten years anyway. He and his brothers are married and have been living away from their father's place for some time; all of the children have been. Witness left his father's place and has been working for himself for the last twelve or fourteen years, and some of his brothers left his father's place before that.

Whereupon C. L. STANDINGER, called as a wit-

ness on behalf of complainant, being duly sworn, testified that he is thirty-nine years old, and his post office address is Molalla, Route 2, Clackamas County, Oregon. He has been in Oregon fourteen years, and has lived in Clackamas County thirteen years, in section 6, township 5 south, range 3 east. About the first half of the time he has been in Clackamas County he was in saw mills, and the balance of the time on a farm. He owns 108½ acres of land in Clackamas County, upon which he lives at the present time. He had owned more. The other land that he owned was adjoining this, and part of it was some that he bought from the railroad company in 1900, in section 11, township 5 south, range 2 east. He purchased from the railroad company eighty acres at $4.00 an acre, by installments, in section 11, township 5 south, range 3 east. He had a little saw mill on it and made a failure of it and sold the whole thing. He intended to make a farm of it, if he could. The present land that he owns he purchased from W. O. Vaughn. It was originally a donation land claim—more or less timbered. Vaughn logged the timber off and he bought it as logged off land. There was no land in cultivation at the time he purchased it, no improvements whatever. He paid $6.00 an acre for it on October 2, 1907. He has slashed about eighty acres of that land, and has had about ten acres upon which he has raised two crops. He slashed the underbrush and stuff, and bad timber that was left after they got done logging, burned it, fenced it and seeded it, and this grain which he raised was where there were small stumps. The land lays so he could

swing a cradle over it, and where there were big stumps logged off, he cut around them, cut a crop of wheat on them. The next year he had hay and cut it with a scythe. He is now grubbing the stumps. The first year he stayed at the saw mill near by, until he had money enough to build him a house, and the place has been his home ever since, and he has made his living from that land and he has had no other means of support than that furnished from this land. He had about sixty acres of this land slashed, everything that the loggers left was cut down, except some of the large doty trees, that is, more or less decayed, that the loggers did not want. He left these big ones standing, and anything smaller was felled. Then the land was burned over, then fenced and then seeded to timothy. As to the ten acres there, he piled the stuff that didn't burn and went in there with a shovel and plow, and tore up the ground and seeded it to wheat. He raised 35 bushels of wheat to the acre off of that, and the next year he seeded that to oats and vetch, and raised 25 tons of hay off of it this summer that way—cut it with the scythe. He has now grubbed thoroughly in there, and he is pulling the smaller grubs, and leaving these big large ones that the loggers left where they fell. The loggers took everything from two feet up, and all those big stumps he left there scattered on this part. He has picked the place where the timber was lightest to begin with naturally, and he is pulling the small stumps and leaving the biggest ones. He can plow around them and drive a binder and mower around them. He is familiar with the business of farming in this general com-

munity in Clackamas County, in the timbered land. Referring to Defendants' Exhibit 259, he lives in section 6, township 5 south, range 3 east, and in the west half is where he owns his land. He has worked on a farm two summers just west of there. It was a home place. It was the Charles Cutting donation land claim. In the saw mill he worked in sections 11 and 12, township 5 south, range 2 east, where these two mills were located. He has been around there all the time, and is familiar with the country for several miles around there — he would say five miles in all directions. He is acquainted with townships 4 and 5 south, ranges 2 and 3 east. He lives at the intersection of these four townships, and the different parts of these four townships he is familiar with. He is very well acquainted with sections 7, 5 and 31, in township 4 south, range 3 east; sections 5 and 7 in township 5 south, range 3 east, and these little tracts marked in green in township 5 south, range 3 east, he is familiar with. He has a general knowledge of the remainder of the land in these townships, and has been over them sufficiently to acquaint himself in a general way with the growth on them and the character of the land and their agricultural possibilities. Most any tract there of 160 acres of these unsold railroad lands would support a family. He does not think one could pick out 160 acres there that would not support a family, and these lands would be suitable for settlement.

Q. Mr. Standinger, what has been the effect of the railroad company's refusal to comply with the terms of the grant in selling to actual settlers in 160-acre tracts,

at $2.50 an acre, if you know, in that community that your testimony covers?

Q. Do you understand the question, Mr. Standinger?

A. Yes, I understand the question. Do you want an answer?

Q. Yes.

A. Well, it has in various ways. One way it has retarded our schools, inasmuch as the schools draw money according to the number of pupils. And there are people in there that would have bought land if they could get it. It has kept settlers out, and kept our schools back. There is a sawmill there now that has practically logged off—no timber handy unless it would be railroad timber; there is a little of that probably they could get—they are moving out of the country. This is an industry out of the country. That is handicapped too. If the settlers had it, they would have cleared off this logged off land, and improved it, and it would be more valuable with the improvements on it, and the stock and everything, than it is now. And there is everything that would have been in favor of improving the country if we had more settlers there.

Q. About how much plow land could they get on a 160-acre tract, a settler on this railroad land?

A. Oh, there is no 160 but what you could get 25 per cent. Some of it considerably more.

Q. Are similar lands settled upon and made homes

of in this vicinity, other than the railroad lands?

A. Yes, sir.

Whereupon, on cross examination, witness testified that his home is situated in the west half of section 6, township 5 south, range 3 east, which he purchased from W. O. Vaughn. The title passed through three or four hands. It was originally the Andrew J. Cutting donation land claim, or a part of that claim. He bought 80 acres in section 11 from the Railroad Company, which was in township 5 south, range 2 east, and he thinks it is the east half of the northeast quarter of section 11, or the west half, he would not be positive now. It is not improved. The man that bought it just fenced it and makes a pasture of it. He bought it himself from the railroad first, contracted for it in the year 1900, and agreed to pay $4.00 an acre, and owned it five or six years before he sold it to the man who now owns it. He sold it with a little saw mill and some odds and ends for $750. He didn't really get any more out of the land than what he paid for it—it was practically a forced sale. Only a garden patch on it has been cleared since he bought it from the railroad company. The present owner does not live on this eighty, he uses it for pasture. It has a house and two barns on it, but the present owner never lived on the place. He uses it for a camp there some times in the summer, and to keep stock there all the time. These stock do not range outside over the country generally. When they are not there the owner has them on his own place. It belongs to W. A. Shaver at Molalla,

who is a large stockman there. Shaver has a large place at Molalla of about 160 acres, probably not that much. He has cattle and a few sheep. Twenty-five per cent of these railroad lands in that vicinity with which he is familiar in those two townships, some four or five miles east of where he lives, up the eastern boundary of the township, with which he is familiar, could be plowed after the timber is cleared. Some of it is in burns, that is, some of it could be plowed without taking the timber off. It is burned in patches. There may be eighty acres there that would have four or five acres burned, and just a little fern, a little undergrowth, four or five acres of timber and then a little opening which is burned in patches. These open places would be very easily cleaned. There are lots of places there where there would be forty acres, half of which would be easily cleared that way, and the other half would be spotted. These open places in these burns that are free from timber, that would not require clearing, are scattered over the different quarters.

Q. And are they small parcels, three or four acres in a spot?

A. Oh, there will be more than that in a spot. Those burns they are irregular. Those burns will cover perhaps thousands of acres, and they are irregular, you know with spots of timber here and there in them. There are farms scattered all over these burns, small farms. People, of course, cannot clear the whole place in a few years. They have houses scattered, lots of houses and

small farms, with a few acres, up to ten or twelve or fifteen acres. Farmers work in the saw mills but very little. Sometimes the young men that are just about coming of age will work in them, but the regular farmers do not depend on saw mills and do not try to work out, they have enough to do at home. They raise hay, wheat, oats, barley, have a few cattle to milk, some hogs and sheep. Some of them have goats where they have land that is brush land. They haul their stuff to market at Canby and Oregon City. Canby is fourteen miles away; Oregon City is sixteen miles. Molalla post office is six miles from his place. At Molalla there is a hotel, restaurant, three stores, a creamery, and a number of residences, two blacksmith shops. It is not on the Molalla River, but is about three miles from the river south. He thinks Molalla is situated on a donation land claim, but is not positive. Most of these donation land claims were taken there from 1845 clear on to the end, until 1873, till the time came when they could not get any more land there. These railroad lands of which he speaks, are within four or five miles of where his place is in section 6, township 5 south, range 3 east, and it is hard to say what these railroad lands in their present condition, the best of them would be worth—the value of the timber as well as the land. He thinks there are lots of people who would pay $20 an acre for some of it. There is a market for the timber off of these railroad quarters that have timber on them. This market would be at Hult's sawmill at Colton and at Mulino, and the Schafer Lumber Company at Meadowbrook. These three mills could

buy. There has been a mill down near Canby, the Adkins sawmill, but that is sold, and they have quit running logs on Mill creek. In fact, they could not get any more, about all is tied up in the railroad land. They could not get them. These mills would have to stop running unless they could buy timber from somebody. The Hults mill has some outside timber situated along Mill Creek. Some is all felled, piled, and ready to put in the creek on the half of section 6, in the same section in which he is. The timber is just normal, and they pay stumpage for this timber around about a dollar a thousand. They leave the land with lots of trees that are too small for logs, lots of them are rotten and doty, and occasionally a white fir or hemlock that is not merchantable timber, and lots of underbrush. They cut these large trees above the pitch in the stump, which runs all the way from three feet to probably ten feet, and they use a spring board on the big ones; on the small ones, two or three feet in diameter at the butt, they cut without the spring board. These forties are good for that country, or the average for that country, and would average perhaps four hundred thousand feet. He does not know how much per acre the best of it would run, but he has in mind one eighty from which they have taken two million feet in that neighborhood, in section 12, township 5 south, range 2 east, which would be about a mile south and a mile west of section 6 in which he is. There has been a pretty good market for timber there. If he were to buy one of these quarter sections that had a stand on it of 400,000 feet to the forty, or 1,600,000 feet to the quarter section,

or 2,000,000 feet board measure to an eighty, the first thing that he would do to get his money out of it and make it profitable, would be to try to sell the timber. Whether he could sell the timber for a dollar a thousand stumpage would depend a good deal on the location. He might get that, and he might get only 75 cents, depending on how close it is to a mill or creek or river. Most of these tracts of railroad lands there could be logged off and the logs sold to some of these mill people. If he had an eighty acres thus situated, that carried two million feet board measure of saw timber, and could sell it for a dollar a thousand, that would be about two thousand dollars for the eighty acres, and some of these quarter sections would be worth from two thousand dollars to four thousand dollars for the timber that is on it, that is the best ones. If the company should sell a quarter to him as an actual settler at $2.50 an acre, he would get today two or three times his money back, or five times his money back out of the timber, but if he had bought the land seven or eight years ago, he would not. There was no market for timber seven or eight years ago. The market for timber lands first came to his knowledge about the time he bought his piece of the company in 1900. The character of the market for timber since that time has been improving all the time. Twenty years ago these timber lands were worth from $2.50 to $5.00 an acre, depending on location, for agricultural purposes, that is a man would go in there and buy the land and clear it a few acres each year. The percentage of agricultural land would average better than 25 per cent; the poorer

ones would run about 25 per cent; some would run much better. He knows of homesteads taken around in that section there in this timber land. There is the old White homestead and the Beasom homestead. The White homestead is in section 7, and the Beasom homestead in section 6-9, but he does not know how long ago they were taken, but quite a number of years before he came to the country. This timber about which he spoke as just felled and ready to put in the creek, is off of the Beasom homestead—these two million feet. The homestead was 160 acres. They live on that place there and have a farm. He could only guess how long that homestead was there before he came to the country, but it was long before he came. There are donation land claims right up next to these homesteads, and there are donation claims further up in the mountains than this, still beyond this, on the streams. He is a man of family, and he has not worked in the sawmill or in any other business outside since he has been living on his land. He went on to his place to live in February, 1909, three years ago. The reason he did not go on the place before that was that he had to work and make money to pay for it. He could make a living on the place and pay for it after he had a house built and the slashing done and the grass started to grow, but naturally a man has to have money to invest in any business. Take the land in a state of nature with no money, he could not do anything, and no one could. A man would have to have a little money to clean up a little and get started. That is, he had to go and work out and get some money to pay for his place and to help

improve it before he could go on it to live.

Whereupon on redirect examination witness testified that that big burn is just above him to the east. This section is about the edge of the big burn. That is the reason the timber there is in patches. It is in the edge of the big burn, and the edge is irregular. Take some quarters in this burned area and 50 per cent of them would be easily cleared. Other forties there would be very little burned—they vary. He is more or less acquainted with this area in this big burn, which is located around Colton. Colton is two and a half miles east of him, and is the present post office. He thinks Colton is marked on Defendants' Exhibit 259. What is known as old Colton would be about five miles away. The post office is changed here now—pointing to a place just above James, which is at about the corner of sections 3 and 4, township 5 south, range 3 east, on the line between sections 3 and 4, township 5 south, range 3 east. He would say that that burn with reference to that, runs off northeast and then comes off from Colton and runs up on a big hill. He has never been up on the top of the hill, and does not know what section it is in. It would run up there five or six miles or more, maybe ten miles up on the hillside, up on the mountain in section 2, township 5, up to about 4 east. There is a lot of good farm land there. The eastern portion of it is on the side of a mountain—it is poor land but will do for grazing, but not for farming. The remainder of the land other than the plow land of these 160-acre tracts, would make good grazing land. There is a creamery at Molalla, and the dairying industry is thriving in

that community. They have started a corporation at Colton, and a year or two, as soon as they get more capital, they are going to start a creamery there locally. That is a good dairying country, and dairying has been one of the leading industries on the farm.

Whereupon E. E. QUICK, called as a witness on behalf of complainant, being duly sworn, testified that he lives at St. Helens, Columbia County, Oregon, and is fifty-nine years old, and has lived in Oregon since 1862. His father first settled in Washington County on what is known as Chehalem Mountain, and witness has lived in Washington and Columbia counties ever since. He does not actually know in what township and range he lived in Washington County. They lived on what is called East Dairy creek. He was a young man at that time and did not pay much attention to that. They moved from Chehalem Mountain to East Dairy. They lived about two years in Chehalem, and the remainder of the time on East Dairy creek for about seventeen years, until 1880, and then he moved to St. Helens, Columbia County, Oregon. He was married about that time and removed to Columbia County, where he has lived ever since. His first official position in that county was that of county school superintendent; afterwards county clerk, and he has been county treasurer. He holds no official position at the present time. He has been in the abstract business for about seventeen or eighteen years, and has township plats and everything of the different localities of the county, and has traveled and been over different sections of it; often goes

out hunting and fishing, things like that, through different sections of the county, and this abstract business has brought him in touch with the general history of the development of that county, and he thinks he is acquainted with the general character of the soil and the lay of the land. He is acquainted in a general way with the lands in the townships in which the railroad lands involved in this suit are situated in Columbia County, and particularly in township 4 north, 2 and 3 west; 3 north, 2 west; and more particularly 3 north, 3 west. He also knows some in township 5 north, 2 and 3 west. He has been over these lands to some extent, out through that section of the country different times, over the county roads and on to some of the lands. One might say from his knowledge of the abstract business that he is more or less familiarly acquainted with all the entire county, that is, different portions of the county. He lived on a homestead there himself, which he took up in 1884, and which is in township 4 north, range 1 west. He lived on his homestead there about four years, made it his home and cultivated it, and was able to make a living off that land. He was elected county clerk in 1888 and left it on that account, but his family lived on the place until he made final proof. He commuted the homestead and made final proof before his family left the place. He then moved into St. Helens, but he owned the place for a number of years after that. He cleared up quite a good deal of it while he owned it, probably forty acres of it is cleared, and possibly sixty odd acres of it slashed and fenced. He fenced the entire 160 acres. By

slashing, he means that he cut down the large timber and the small timber, cut the small timber and brush first, and then felled down or cut down the large timber and burned it, and seeded that to pasture. He left the stumps in the ground, that is, in slashing. He removed the stumps from the forty acres that he cleared. There were probably three or four acres of a swale in one place of small ash timber on that land. He included in that quite a little bunch of fir and cedar, which was pretty thick. The cedars and firs ran from two feet to three and four feet in diameter. The entire place was covered with timber. There were three or four acres of swale that had ash trees on it, and the balance of the land was fir and cedar. Some of it was merchantable saw timber. He sold some of the timber to a mill, some of the standing timber, but that was after he had made final proof on the place and got his patent. He sold it to a mill company and they logged off part of it. He had made quite a slashing before they had done anything. The timber that he felled and burned was much the same in character as that which he afterwards sold. In the early days there was no market for the timber. They did not consider it of any great value at that time. The practical method of making use of the land for agricultural purposes throughout his whole neighborhood and country there, was to clear the land up and get it into cultivation. Nearly all of the railroad lands involved in this suit in Columbia County are in the townships with which he is particularly well acquainted. In other townships there are only a few acres in each township, with the exception

of one township where there are two sections of railroad lands. In his opinion, there is about 70 to 80 per cent of that land in these townships with which he is acquainted, speaking now with reference to the land generally as a whole, and including the railroad lands, that can be used for agricultural purposes when the timber is removed, and he thinks it would be a good investment for a farmer to pay for the removing of the timber and the clearing of the land for agricultural and horticultural use.

Q. In your judgment, basing your knowledge, or basing your answer upon your knowledge as to the general character of the soil and lay of the land, the difficulties that would confront the settler in the way of clearing the land and preparing it for use—in your judgment, could a settler maintain himself and his family on one of those quarter sections of railroad land within those townships?

A. Well, if he is a man without any means, the first year possibly he might not do that; but when he had cleared up two or three acres of land, why, he certainly could do it, I believe.

Q. After he got started in the way that you have described, what would be the practical thing for him to do with reference to extending his clearing, if anything? That is, I mean now in your own language describe in a general way how a settler should go about it, after he went upon the land, to put it into cultivation and get the best use of the land for agricultural and horticultural purposes?

A. Well, of course, he would have to build his house and get some place to live to begin with. Then he would go to clearing the land and putting it in vegetables and things of that kind, small tracts at first, and afterwards sowing grass and planting out fruit trees; and fruits of all kinds grow well in that section of the country, in part of that section of the country; and grass and things of that kind grow well.

Q. Well, now, that is what I meant before when I said agricultural and horticultural use.

A. Yes.

Q. You limited your answer to agricultural use.

A. Yes.

Whereupon witness testified that apples do well in there, especially Northern Spy apples do fine; pears do well; cherries do quite well; strawberries grow excellent, they have excellent crops of strawberries anywhere in that section of the country, out where this land is located, amongst people who are living in that vicinity; loganberries, blackberries, raspberries, and in fact all kinds of small fruits; and prunes do as well as apples and pears. They cannot raise any peaches in there. Clover does well on that hill land—clover and orchard grass. Timothy does not grow so well on the upland as it does on the bottom land, but orchard grass and clover grow well on that upland, which they call the hill land. It is all good for fruit and vegetables. The climate is favorable for these different kinds of vegetable growth that he has mentioned. It would probably be unpleasant

for the purposes of a home in some instances, because rather isolated, and because there are not a great many settlers through there. But about eight miles from St. Helens, out in township 5 north, 2 west, is what is called the Western Cooperage plant, where they bought up a number of homesteads in there; and people have proved up and made final proof on their homesteads; they have a splendid school, a little store and postoffice, and they are selling that land in there that they bought from those settlers, after getting the bolt timber—they were in the stave business, after getting the bolts and stuff of that kind, they were selling that land at $60 or $70 per acre, about seven or eight miles west of the river; that is, after getting the bolt timber. That is, they were in the stave bolt business, and they cut out the yellow fir. They are barrel manufacturers. He supposes that their business took out 75 or 80 per cent of the timber. It is clear stuff that they use principally, and it possibly might not go that much. That would leave plenty of fir for home use or anything of that kind, and the balance of the land in stumps. They have been selling that from $60 to $70 an acre, some of it, but some of it had been cleared by these settlers, had been cleared up and farmed for a number of years, and they are selling that land at about $70 an acre. The purchasers are making little homes of it in ten, fifteen or twenty acre tracts, and are living there. These tracts are cleared, and are large enough to maintain a family. He is familiar in a general way with the manner in which the railroad lands have been handled in that vicinity, as to being sold or withheld

from sale.

Q. I will ask you whether, in your opinion, the manner in which the railroad company has sold the lands or withheld them from sale has retarded or promoted the development and settlement of that country?

A. I would say that it had retarded the development and settlement of the country.

Q. Well, substantially or otherwise?

A. Well, I should say substantially.

Q. I will ask you to state whether, in your judgment, if the lands that we have been referring to as railroad lands in those townships that you have referred to and which are involved in this suit, had been disposed of to settlers, or should be disposed of to settlers now, would that territory or would it not become settled and populated by settlers?

A. I think it would.

Q. You said, in answer to a former question of mine as to whether it would be a pleasant place for a home, that some places would be isolated. Would that condition be the same if these railroad lands should be turned over to settlers?

A. No, sir.

Q. I will ask you whether, in your judgment, the withholding of the railroad lands from settlement has had any effect upon the settlement of the intervening even numbered sections?

A. Well, I would think it would have had some effect on it, possibly.

Q. How, with reference to the establishment of roads and schools. What effect has the withholding of these lands from settlement had in that respect?

A. Well, it has not tended to development or building of roads and schools, farther than what it has contributed in tax. The railroad company are probably taxed for the land. They might have used the tax on the roads to some extent.

Q. Do you know, as former school superintendent, that a certain number of pupils are required in order to establish a school and maintain one?

A. Yes, sir.

Q. Now, are you familiar with any of the other parts of Columbia County that are similar to that part of Columbia County where the railroad lands are situated?

A. Yes, sir.

Q. Do you know of similar lands being settled upon in the other parts of the county?

A. Yes, sir. Take the Nehalem Valley, for instance; that is in Columbia County—quite a good deal of the Nehalem Valley. That was heavy timbered lands, and it has been settled up along the river and on the hills. There they have established schools and built roads, and have some of them made some good farms—especially in the bottom lands, where the clearing possibly would

not be so heavy. There would be some tracts, maybe, the timber would be scattering on the bottom; but the hill land is heavily covered with timber, and they have good schools and good roads in that Nehalem Valley.

Q. Do you know of any instances where the lands adjoining the railroad lands involved in this suit are in the possession of settlers and being used for the purpose of settlement?

A. I can call to mind just at this time about one place owned by Mr. Grand. If I remember rightly, he is really on a railroad section. And he is making a good living there on the place. It is on Scappoose Creek, and of course he has some little bottom land, but most of his land has been timbered hill land.

Q. You mean it was formerly a railroad section?

A. I think it was, if I remember correctly about it.

Q. That the company had sold?

A. Yes.

Q. You don't mean it is land involved in this suit?

A. There has been a few tracts sold by the railroad company in early days up in the vicinity of Scappoose.

Q. But that is not the land involved in this suit that that man lives on?

A. No; but it is adjoining the railroad land, other railroad land.

Q. Now, these instances where you know of the land being cleared of heavy timber, either by slashing, as

you have described it, or fully cleared by removal of the stumps, are they of rare occurrence, or are they of frequent enough occurrence so as to indicate that the same could be done as to the other lands?

A. I would say they were frequent enough to say that could be done with other lands.

Q. At the present time the settler would not have to burn the timber? It could be sold, couldn't it?

A. Why, in a great many instances, I believe it could be sold, anywhere near any of the logging camps. You see, in that county, there is a number of railroads running out into the logs, into the timber.

Q. You mean logging roads?

A. Logging roads; and anywhere in the vicinity of these roads, the timber could be sold to those logging camps.

Whereupon witness testified that most of these logging roads run down to the Columbia River, he thinks all of them run down to the Columbia River so that the logs could either be disposed of at the mills along the Columbia there, or towed in the Columbia to some market. The price of this land after it is cleared and put into shape for cultivation, speaking in a general way, depends somewhat on its proximity to the front. What he means by the the front is near the river or railroad. Land within six or eight miles, as he has before stated, is worth fifty or sixty dollars an acre after it is cleared of stumps. Of course nearer the front, one can scarcely

buy any cleared land for less than $100 or $150 an acre down his way. Further back it might possibly not be worth so much as that. His answer includes the slopes as well as the low level lands. The river runs almost north along opposite St. Helens, as shown on this map, Defendants' Exhibit 259, and these railroad lands that he has been referring to, are shown on the map, most of them, as in townships 3 and 4 north, ranges 2 and 3 west, and they extend from the river five or six to ten or twelve miles. Most of these railroad lands are pretty heavily timbered. Some of it he would consider good saw timber. His recollection is, that the stumpage, generally speaking, in there, is assessed at about two dollars a thousand. He does not think there would be any doubt of the ability of a settler to clear the land and make a home if he had the benefit of that timber, if he was anywhere near those logging roads to dispose of it. He might have a tract too far away, that he could not dispose of it. That is, he could not give assurance that his answer would apply to each individual quarter section. He does not think it would in every instance require 160 acres of that land to maintain a settler and his family, with the possibility of raising small fruit and vegetables and things in that section of the country. He could make a living on ten acres provided he had it in small fruits and things of that kind when that country is ultimately cleared and settled up, because he could get a market for it, and would raise enough on ten acres to support an ordinary family. He cannot say exactly that he knows where the McLaffertys and a number of oth-

ers represented by Mr. Lafferty, made what they claim to be settlements in there, and made application to purchase land from the railroad company; he cannot say that he knows exactly where those lands are situated. He does not think he has been up in there on those lands. He has not been there within the past four or five years, but he does not mean to qualify his former testimony that he is acquainted with that general territory. He has been over that territory quite a good deal, but not since this controversy arose.

Whereupon on cross examination witness testified that he sold the timber on his homestead in 1889, he thinks, to Wickstrom & Howard, and received a dollar a thousand for the fir and cedar, and did not realize over $500. These people to whom he sold were men that owned a little mill built on the corner of his homestead. If he had kept that timber until now, he could easily have gotten two dollars a thousand for it, and he thinks two dollars a thousand is the usual market price of stumpage reasonably accessible to logging roads or some means of transportation. The Chapman Timber Company has been buying quite a good deal of stumpage in there, and the Benson Lumber Company, the Nehalem Investment Company, and the Lamb Company, and several other companies have been buying timber lands through there. In fact, he has made a number of abstracts for the Benson Lumber Company and all of those companies. He refers to S. Benson, and he knew him well when he drove a yoke of oxen into St. Helens. He has made his money in timber lands and logging, a great deal of

it in Columbia County, and in buying timber lands and stumpage in Columbia County. He knows that Benson is interested in building in Portland.

Q. Now, suppose that these Lafferty people, who have attempted to buy this land from the railroad company, or made applications to buy it, at $2.50 an acre, should get a deed from the railroad company and a good title at $2.50 an acre, what would they be able to do with the best quarter section of timber that is situated in that group of claims or quarter sections that these clients of Mr. Lafferty have applied for? What would they be able to do with that quarter section—what could they sell it for?

A. Well, if it was accessible to any of these railroads, they could sell it for possibly two dollars a thousand.

Q. What would be the stumpage? I mean what would be the quantity of merchantable logging timber that the best quarter section of this land would carry—about how many million feet, board measure?

A. Well, I think there is tracts out there in that section of the country that will go six million to the quarter section. That is an exceptionally good one, though.

Q. What would they average, the timber land?

A. Well, take it all the way through, they would average probably three million.

Q. Now, if they averaged—if the best one brought six million——

A. That might be too large, but I am not certain about that.

Q. You are reasonably familiar though with the timber lands of Columbia County and the contents of these quarter sections?

A. Yes, sir. I have worked in the timber quite a good deal.

Q. And you have been in the abstract business, and in a general way have knowledge of what these timber companies are paying for these quarter sections?

A. Yes, sir.

Q. And other tracts?

A. Yes, sir.

Whereupon witness testified that the market for timber land has been pretty active for the last five years in Columbia County. These people of whom he speaks, like the Chapman Timber Company, are large concerns, buying a large acreage for the timber. If a quarter section had six million feet board measure on it, and one could get two dollars a thousand, that would be twelve thousand dollars for a quarter section. It would be pretty hard to say what would become of these timber quarters of Mr. Lafferty's clients if they got this title, that is, what would be done with them. They might sell the timber and reserve the land. If the lands were in close proximity to those of the Chapman Timber Company and these other large companies, they would probably be transferred to these large companies, and he

would say that it is probably the case in his county that substantially all the homesteads and cash entries and timber entries and entries under the timber and stone act, where they carry valuable timber, would probably be transferred to these large companies. He knows of a number of homesteads and pre-emption claims that were sold to these timber men. In nearly all instances the companies buy the title as well as the timber. There are a few instances where the land has been reserved. That is, there are a few instances next to the Columbia River, within four or five miles, where the owner of land wants to reserve the land and has some timber, and he sells the stumpage, as he did with his. He does not own his homestead now. He sold it about 1898 to William Skuzie, who is himself not living on the place but his son and son-in-law have divided the place between them and have been living there all the time. He would not say that all of these timber lands shown on Defendants' Exhibit 259 are within six to fifteen miles of the Columbia, there may be others beyond that. It would be about fifteen miles from St. Helens to the farthest railroad land. These railroad lands are on different elevations, and will range from eight to six hundred feet up to twelve or fourteen hundred feet, the highest point. These lands are in what one would suppose would be called the Coast Range, a part of the Coast Range. They are more or less rough, some of them, and some of them are gradual slopes; quite a good deal of that land is a kind of gradual slope. According to that map, Defendants' Exhibit 259, all of that land came to the company under

the grant of May 4, 1870, and the yellow field follows along north from Hillsboro about ten or twelve miles, almost in a body clear across that part of Columbia and Washington counties within the limits of this grant, with no railroad land either sold or unsold in that territory; that is, if that map is correct. He thinks the majority of these lands in yellow along the Columbia River, on both sides of it extended to a point three or four miles west of Yankton, with no railroad land either sold or unsold of any consequence in that territory, except a little over in Clarke County, Washington, if the map is correct. He supposes that Holbrook is in the area shown on this map on the Astoria road, just below where the United Railways turns out at Burlington in Washington County. Holbrook is just built down the river on the slough. Most all of this unsold railroad land in green is hill land, and there are some large burns in there, which was heavily timbered until these burns. There might be a section burned there. He could not say if any of Lafferty's clients have made applications on any of these burns, or that any one has made application to purchase any of these burns. He does not know who has made application, and who has not. Some of the burned land is owned by men that have taken up homesteads. There are a few settlements out there on the burned even sections, but there is very little. There are not over four or five claims in the burn. Most of them are homesteads; in fact they were all at the beginning homesteads. There is some dead timber, and a few cedars possibly, left on these homesteads. That burned

area is about ten miles away from St. Helens, near what they call Bunker Hill. It is pretty hard to say how many saw mills there are in Columbia County. There are two at St. Helens, one at Scappoose and five or six at Rainier, four or five at Clatskanie, besides one or two other country mills probably. He could not tell exactly how many there are. These saw mills are not all on the Columbia River. The mill at Scappoose is out near this railroad land, out towards up Scappoose Creek, toward the Chapman Timber Company, which has a logging road from that down to the S. P. & S., which crosses the railroad. Mills at Clatskanie are off the river a little ways, some of those mills are off the river. There is a Westport slough in Columbia County out of which logs are rafted to Portland. The Benson Logging Company logs in the Westport slough, or did log there, and he thinks Benson sold to Portland, and also rafted to San Francisco. He thinks St. Helens has about a thousand population now. Rainier is supposed to have the greatest population of any town in Columbia County—Rainier or Clatskanie. Rainier has about 1859 population, according to the census of 1910, and the population of the county in 1910 of 10,580, has increased some; he would think it has increased ten per cent in two years. St. Helens is about twenty-seven miles from Portland by rail. Goble is twelve miles below St. Helens, in Columbia County. The Northern Pacific Railway Company built and operated its trains across the river at Goble, from Puget Sound to Portland about 1883, and it has been in operation up until the bridge

was built at Vancouver about two years ago. The Astoria & Columbia River Railroad, operating from Portland to Astoria, does not touch St. Helens. This road has been there twelve years at least, and the Northern Pacific operated all of its trains by way of Goble, across the Columbia River, between Puget Sound and Portland, until the bridge was built by it across the Columbia at Vancouver in the last three or four years. The Astoria & Columbia River Railroad Company has been operating trains between Portland and Astoria, through Rainier and a little west of St. Helens daily, and sometimes three or four trains a day, for the last ten or twelve years. Speaking of these lands as being agricultural, he means after the timber has been removed.

Whereupon, on redirect examination, witness testified that he thinks A. B. Hammond was instrumental in building this railroad from Portland to Astoria, and that he held it some time before he disposed of to the Northern Pacific Railway Company, and it did not become the factor that it is today until after it became a part of the Northern Pacific Railway System. His recollection is that the Northern Pacific Railroad was built by the Northern Pacific in 1883, and the road between Portland and Astoria did not become a part of the Northern Pacific Railway System until something like 1904 or 1905.

Q. Now, Mr. Quick, you said that if these lands were sold at $2.50 an acre to settlers, there would be a market for the lands by the demand for them on the

part of those large timber companies, and that those who purchased them from the railroad company could sell them to the large timber companies if they desired to?

A. That is for the timber, yes.

Q. Well, now, would it be necessary for a man who bought those lands, desiring to make a home on them, to do that?

A. No, it would not be absolutely necessary for him to do that.

Q. Of course, a man, after he had cleared it up and made a nice home of it, he could still sell it, if he wanted to get the money out of it, the same as you did with yours?

A. Yes, sir.

Q. That is true, isn't it?

A. That is true.

Q. Well, do you mean to testify that, if these lands should be sold by the railroad company to settlers, they would necessarily be passed on by the settlers to large timber companies?

A. No, sir; not necessarily. Taking that as a supposition, it could be done, you see, if they wanted to.

Q. In your judgement, do you think that they could sell the timber and retain the land, if they wished to?

A. Well, they do in some instances sell the timber

and retain a portion of the land; not all of it, but a little home, or something that way. But generally speaking, the timber company wants the whole title when they buy. I mean the timber company in buying would want the whole title. That has been the custom on nearly all the land that was bought in Columbia County.

Q. That is true largely because, where the timber is sold on a stumpage basis it has to be removed within a specified time?

A. Yes.

Q. Whereas if the timber company buys the land itself, it can hold the land indefinitely?

A. Certainly.

Q. And has no restriction as to the time that it must remove the timber. It that it?

A. Yes, sir. That is right.

Q. But do you know whether in these railroad sections concerning which you have testified, a settler could not find a market for the timber if he desired to sell the timber and retain the land?

A. Just read that question.

A. No.

Q. That would be a matter for future development of the market?

A. Yes. It would, yes.

Whereupon C. F. CARTER, called as a witness on behalf of complainant, being duly sworn, testified that

he lives at present at Gold Hill, in Jackson County, Oregon. He is forty-four years old, and has lived in Oregon about thirty-two years, most of the time in the meadows of Evans Creek. His father lived in Jackson County since about 1880. He lived right in there in the meadows all the time but about two years, referring to a place named Meadows of Evans Creek, that is what they called it when they went in there. His father lived in section 21, township 34 south, range 2 west, for about nineteen or twenty years. He went on there when witness was about fifteen years, about 1883, something like that. His father had a tract of eighty acres. When his father went on it the land was pretty well covered with brush—some little timber. His principal business when he lived on that place was farming that eighty-acre tract. He did not own the eighty acres. The railroad company was supposed to own it. His father never got title to it. He could not say whether he ever made an application to the railroad company to buy it. The company was not selling the land but had taken it off the market. The company was not selling, because the land was off the market. He does not know whether his father ever actually made application for it. His father left the land because he could not get title to it. His father had a family. This land was principally plow land—most of it good farming land. They were near Medford, Central Point and Gold Hill. They were all near about the same, and Spikenard is in the same township, or at least he supposes it is. It is in township 34 south, range 2 west. The general character of the land in that locality

is rather hilly, and level spots around on it, and springs, and the like of that. There were settlers in the vicinity of his father's place. The land was hilly and mountainous, with fields on it, little fields around on it. There are about ten or eleven settlers who live within a radius of seven or eight miles of his father's place. They had pretty good little mountain ranches and were making a living on it. These ranches were built on the mountains. One of them was right pretty nearly on the divide. He has been over a good deal of that country there, all around in the mountains there. He used to hunt in there quite a little, and that was the same general character as this land that was settled on there. Settlers were interspersed through this mountain country.

Whereupon, on cross examination, witness testified that he could not give the description of this eighty of railroad land which his father lived on, by legal subdivisions. It was in section 21, township 34 south, range 2 west; quite a ways from Wimer, and about half a mile from that fork of Evans Creek which runs up through the Meadows. Meadows was like a little meadow in an early day, and the place called "The Meadows" covers several sections. It is over eighteen miles on Evans Creek up from Woodville, but he does not know the exact distance. The country down on Evans Creek is a fine little valley there, but it is different land up there where his father lived. Down on Evans Creek is bottom land, and this that he refers to is not. Woodville is at the mouth of Evans Creek, and is about eighteen or twenty miles distant from his father's place. It is not

level country all the way up there. That country is up quite a little ways, and then it is not level, then opens out into the Meadows again. It is a fact that the country on Evans Creek, the farm land on Evans Creek, is of the same general character as the farming land up around Central Point in Jackson County. It may be some of it just as good, but it is not the same character of land, all of it. There is a whole lot of difference between one land and another, one is made land and the other is not. A lot of that land over about Central Point and Medford is made land along the creek bottom. Central Point is on the railroad and on land that has been there for many years, and Central Point has been a town since the railroad was constructed through there in 1884 or 1885. Gold Hill is about nine miles from the mouth of Evans Creek, and Wimer is on Evans Creek. He cannot tell how far his father's place was from Wimer. He has been down through there. He cannot tell how long a stream Evans Creek is. His father went on to this piece of railroad land in 1883, and lived there about nineteen or twenty years, during which time he did not have any title and he did not pay for the land. He does not know whether he applied to purchase it or not. He said the land was taken off the market was the reason his father did not get it, but he could not tell exactly when it was taken off the market. He does not know that it was not taken off the market until 1903, but he knows that it was taken off before 1903 because he has been gone from there since that. It was taken off while witness was on there, and he left before

that. His father died about 1903. Witness did not apply to purchase this land because the company had taken it off the market. He knows it was taken off of the market because he heard that it was taken off. He did not write to the company or any of its employes to find out. His father stayed on the land until he died. Witness moved away from there just about that time. His father did not die on the premises, but he had moved off of it. He farmed that place there about nineteen or twenty years, and had about twenty-five acres in cultivation. They had some hill land on it. There was about sixty acres of that could be plowed—sixty acres of the eighty, after the timber and brush was taken off. They could not plow it with the timber and brush on it. There was more brush than there were fir trees.

Q. Now, you want the court to understand that this unsold railroad land within those two or three townships surrounding this eighty is about the same character as this eighty acres that your father lived on for about twenty years, and didn't buy or pay anything for?

A. No, sir.

Q. Well, what is the fact about that?

A. Well, the facts is what I told you a little bit ago, told this man about the character of the land—these other people that was up on the mountain sides.

Whereupon witness testified that he never cruised any of these unsold lands of the railroad company. Some of these unsold railroad lands may be timber lands, and some might not be. There are places there a man could

settle on and make a little home out of it. They have timber. There are not many sections in there that has not got a little timber on it. There is one saw mill up the hillside further on Evans Creek. Kesterson and Silsby's saw mill is away down below—just how far he could not tell, but it is quite a little ways. He could not tell where their saw mill is, but it is on Evans Creek, that is, they had one in there. He does not know where they have a mill now. He could not tell anything about the saw timber below there, because he was only along the road down there—he never had anything to do with land in there. All he is speaking about is right up there, close to where he lives. All that he knows about that that is back in the hills, he has been over there hunting.

Whereupon D. P. CALDWELL, called as a witness on behalf of complainant, being duly sworn testified that he is fifty-one years old, and resides at Walker, Lane County, Oregon. He was born in Iowa and came to Walker in the year 1890, and has made that place his home. He has not been there all the time. He lived there most of his time for more than fifteen years, and has been engaged in farming in Oregon. Prior to coming to Oregon he was engaged in farming and as a laborer. Examining Defendants' Exhibit 259, witness testified that he was acquainted with the lands in township 20 south, ranges 3 and 4 west, and in township 19, which would be north of him. He is pretty well acquainted all over three or four townships in the country there around about six to eight or ten miles in any direction from Walker, and is acquainted with the coun-

try of which he speaks, and knows better by the names than he can tell by the map. He has been to Wendling, but he is not acquainted with the lands through there, he only just went up the Mohawk Valley and back. This yellow field running clear through to the end of the map or the side of the map is the wagon road grant there. That would be south and east from Eugene, and he has been up through the Pleasant Hill country and south of the Pleasant Hill country he has been on the Coast Fork of the Willamette; he has been through that country and through the hill country there. He has been up in that country from the Oregon & Southeastern Railroad; north of that railroad that runs east from Cottage Grove. He has been over those hills towards Bear Creek, and through to Pleasant Hill. He does not know the country so well by the number of sections and ranges as he does by observation. He knows it better by creeks and towns. He has been on Lost Creek and through that section of the country. Always when he was in the hills he observed what was around him, took notice of the timber and the land. He had a homestead in township 19 south, range 4 west, in section 25, but did not prove up on it. He lived there about three years, a little more. It was very good land. There was timber on the land, and open places; kind of bench land formation, that is, for grade. He farmed it in the way new settlers generally farm such land and he knows what a settler has to buck up against when he starts it. He knows what they have to contend with. He had to build a road about three-quarters of a mile to get to it.

He left his homestead on account of sickness; he was advised to take his wife and family away; and to get to send his children to school, young children. He has three children. He made his living on his homestead while he was there.

Q. Now, from your observation of this land that you have been over, railroad land and land in the vicinity of the railroad land, what percentage of 160-acre tracts by contiguous 40-acre subdivisions, but not by quarter sections, would furnish support for a family if the settler would go on that land?

A. What percentage?

Q. Of the 160-acre tracts would support a family, to move on there as a settler?

A. I don't know as I just understand the question. That is, what percentage of the 160 acres would it take to support a family?

A. No, that is not the question, Mr. Caldwell. About how many of these 160-acre tracts, described the way I have in my previous question, could a man go on with his family and make a living on, as a settler on them?

A. Well, he can make a living on any of them that I have seen.

Q. Would there be sufficient plow land to raise the hay and grain and vegetables that he would need?

A. Yes, sir.

Whereupon witness testified that there was railroad land on two sides of him in the vicinity of his homestead.

There were three quarter sections right around him where he was. They were, if anything, better than the quarter section that he took, because he was up higher in the mountains. About the first thing a settler starting out on one of these 160-acre tracts would have to do, would be to make a road to get there, and the next thing he would have to do would be to cut off the brush, build him a house and move in, and haul in enough supplies to last him about a year, and then go to slashing brush and burning it, and seed it down in wheat and grasses, and get his cows accustomed to the place, and go to making a living. In his experience, lands had been cleared and put in cultivation in that vicinity, he helped to clear land in the territory with which he is acquainted, of which he speaks. The character of the land that he cleared was rolling, had timber and brush on it; some of it pretty steep grade. He has helped to clear land that was steep enough that they would let the horses rest after it was cleared, going up the hill two or three times maybe. The horses needed rest drawing discs or weeders or anything. He helped the orchard company clear off some land a year ago last June that this summer he helped cultivate, and he would let his team rest two or three times going up the hills. In the hill land there, in the two or three townships with which he is mostly acquainted, he thinks that they could, according to what land he has worked over, farm about eighty per cent of it; about eighty per cent of it could be put under the plow.

Whereupon on cross examination witness testified

that he means by agricultural or plow land that it could be plowed after the timber and brush had been removed; that is to say, probably twenty per cent would be too steep or too rocky to plow. He does not know whether this homestead that he took in section 25, township 19 south, range 4 west, upon which he lived for three years, had been homesteaded before he took it up. The man that located him upon it said that it had been entered before, he told him that it had been—the entry had been cancelled some time. That is to say, he thinks it was lost to the railroad grant because it had been settled upon or entered prior to the time the railroad grant was made. That was the way he understood it, and then it had been abandoned and he found it, or the man that located him found it as vacant land. Before the grant became effective it had been taken and then abandoned, that was the way he was told about it and the way he understood it. He does not know what has become of it since he abandoned it. He does not know how the title is, or whether it is public land now or not. There was a man who bought some of his stuff that he had on there, but there is no one living on that land now. There might have been some good saw timber on this 160 acres of his, but not very much. Some of it was pretty rough, and he could have cleared some of it, and did clear and raise hay. He did not clear very many acres free from stumps, probably not more than two acres, but mowed over about twelve acres of hay. He does not think more than two acres were cleared free from stumps, and he would say that he slashed and burned besides the two

acres about twelve acres. He had cows while he was living there with his wife and three children, and these cows roamed outside and pastured over the railroad land wherever they wanted to go. He had three cows to milk, and several calves and yearlings, something like that, but he did not go into the stock business particularly. These cows helped to make his family living. He did not keep hogs, he thinks he had only one hog on the place. He did not keep any goats, but had three or four horses, but did not raise horses for sale, nor sell any grain or fruit off his place. He sold some vegetables, some onions, potatoes, lettuce and such stuff. He does not know how much he would sell any one year. They would, when they would go down, take a little stuff out of the ground. Just like one would take a marketing of eggs. They took eggs, too, and some chickens. He raised feed and chickens and a little butter to sell, and they would take whatever they had to spare. He presumes that he did not get over forty or fifty dollars a year out of that. When his wife got sick while they were living on the place, the doctor told him that he had better move away and he moved down to Cottage Grove, which is a pretty good town, but he does not know its population. That is the place where this railroad begins that leads out to Bohemia; he has not been out there on the railroad, but has been to Bohemia, out to the mines there. That is a good timber country, and there are a good many saw mills out on that road up in the timber. He has been once over to Wendling. Most of the time since he came to Oregon he has been

living at Walker, excepting the three years he was on his farm; he has been away from there some. He lived at Cottage Grove between three and four months. Since he left the homestead he has been farming and laboring, where he lives now at Walker, and he only has twelve acres at Walker; he rents land. Walker is his post-office, and the twelve acres of land which he owns is about a mile and a half from Walker, and the place that he rents is little more than two miles. These twelve acres that he owns was bought from the railroad company, but he does not know how long ago it was bought from the railroad company. It is a part of the old settled country. The land that he rents is in a railroad section. He is in section 5, township 20 south, range 3 west; that had been sold a good while ago by the railroad company, and of these twelve acres probably three acres in cultivation, and the balance—nine acres—are stumps and timber, logs. He has never worked in the cruising business, and but very little—a few days maybe—in a saw mill. During the time that he lived on his homestead, he did not go out and work for wages anywhere; he might have helped his neighbors, to exchange work, just swapping work among the farmers. He did not go out to work. He never went over any of these railroad lands in the three or four townships of which he has any knowledge, for the purpose of estimating any timber that was on the land. He knows where the Booth-Kelly Lumber Company's timber is at Saginaw, but he does not know how far their holdings go, but their mills are quite a ways, he would say five or six miles from the

railroad. That is pretty fine timber that the Booth-Kelly Lumber Company has in there, but he does not know how much timber to a forty they have—he has no knowledge of that.

Whereupon U. S. DIX, called as a witness on behalf of complainant, being duly sworn, testified that he lives at Colton, Clackamas County, Oregon, and was born in Missouri. He is forty-four years old, and was seven years old when his people moved to Oregon. They moved over in Washington County, lived near Glencoe, he thinks about four years, and then moved from Washington County into Clackamas County, Oregon; that was about thirty-three years ago. His father took a homestead in section 34, township 4 south, range 3 east, and died about 1898. He has lived on this homestead since he moved to Clackamas County. His father proved up and got a patent, and witness is living there now with his mother. His father's family, and since he died, the survivors of the family, have made their living on that place; spent all of their time on the farm; all the time excepting about two weeks in the fall, when he was running a threshing machine, threshing in that vicinity for others than on his own farm. He threshed over townships 4 and 5 south, range 3 east, and he is familiar in a general way with the development and settlement of that country, but does not know particularly of any railroad land in his vicinity. He has been around over the country there quite a little, but never paid any particular attention to any of the land. Looking at Defendants' Exhibit 266, witness says that he lives in sec-

tion 34 of that township there, and that the lands marked in black is railroad land. He has been around over township 5 quite a little, running around with the threshing machine, and he has never been up in the townships east of that, in range 4 east, and does not know anything about that in there; he does not hunt any. He has not been any further south than in the township south of township five, only in crossing it, as he is on the road going from his place to Gervais, and in that way he has been up in there a time or two and passed it in crossing; that is all he knows about it. He is not acquainted with that part of the country at all. Gervais is on the railroad, in the Willamette Valley, but he is not acquainted with that part of the country at all. Section 33, that joins his place on the west, averages up with his land and is just about the same thing as his land, and the land north of him in township 4 south, range 3 west, sections 29, 27, 25, 23 and 21, are just about the same as where he lives there, about the same all the way through there. That is true with reference to section 31. He does not know hardly what one would call the soil they have out there. It is burned over land; that is, a good share of it has been burned over, that is, burned over before the settlers went in there; there is quite a bit of it is what they call the burn; there are bodies of timber, too—some timber; the burns are in patches. Where they have done any clearing the timber has been burned and it is out in the open. They had to burn the old logs and stumps where they cleared—they had to burn them. Some of the timber was down—quite a lot

of it was down—when his father moved there. They had to burn the logs, the rotten logs and stumps. There is about somewhere around 25 acres in cultivation on this place that his father owned, at the present time. When the family first went there, his father made shingles to furnish the groceries until he got the land open enough so that it would make a living. After they got enough open so that they could make a living, they absolutely made their living on the land. He first commenced threshing in 1895, when they first got the machine, seventeen years ago, and he has been doing some of this threshing for his neighbors since that time, he has been threshing every year since that time. It would average about fifteen days each year. This year he thinks he threshed at about twenty-six or twenty-eight different places. He could make his living from his place independent of the threshing outfit.

Q. The bill of complaint in this case shows that in that township 4 south, range 3 east, the railroad company has, subject to the rights asserted by the Government in this case, lands in section 1 over 500 acres; section 3, 40 acres; section 5, over 200 acres; section 9, 40 acres; section 13, 280 acres; section 19, 47 acres; section 21, 200 acres; section 23, 280 acres; section 25, 200 acres; section 27, 320 acres; section 29, 120 acres; section 31, 240 acres, and in section 33, 120 acres. Now, in your judgment, does your general description of that land apply to these lands generally, or do you wish to make any exception as to any of these particular lands?

A. No, I think it would be general.

Q. What is your opinion as to whether a settler could go in there and settle upon these lands, and make a living for himself and family, on tracts as large as 160 acres?

A. Well, I think he could do it all right.

Q. Now, the other township that you are acquainted with. You say it is township 5 south of the one which you live in?

A. Yes.

Q. The bill of complaint in this case shows that there are in that township considerably over two thousand acres of land, commencing in section 1 and running through some of the odd numbered sections down to section 23. Is your general testimony with reference to the character of these lands and their susceptibility to settlement, does it apply generally to those lands?

A. I think it is all just about the same, as far as that goes, as near as I could make out.

Whereupon witness testified that there is quite a lot of that land in there that is occupied. Section 35 has four or five different families living on it; they just came in there a couple or three years ago. They are improving right along. As far as he has been around over other similar lands in these same townships in the possession of settlers, they are making a living on their land, those that have land there. He never applied to purchase any of these lands from the railroad company. He is still living on his place.

Whereupon on cross examination witness testified that he thinks his father entered this tract as a homestead about thirty-three years ago, when witness was about eleven years old. He went with his father on the place. There wasn't any of it cleared when they went there, and there was only a little shack built on there; he does not know who built it. It had been settled upon before his father entered it; there was a fellow who filed on it and built a shack there, but he does not know why he gave it up. He supposes he attempted to homestead it before his father did; he filed on it, but he does not know anything about that. The first entryman had just had a little spot around the shack there, probably a quarter of an acre or so, cleared. The shack was a little box house of rough lumber. He does not remember the man's name. His father filed a contest and succeeded in the contest, showing that the man had not complied with the homestead law by reason of settlement. He could not tell whether this man had any family or not. All he knows is that his father filed a contest against a man who had previously tried to enter the land under the homestead law, and his father was successful, and had a preference right of entry after the contest was decided in his favor, and he entered it as a homestead and lived there until he died. He did not pay anything for the land excepting the five years residence and cultivation. His father died October 15th, 1908, and had a family of seven children, of which he was the second. The children all left home but him. His brothers have a saw mill and his sister is married.

There are three brothers interested in the saw mill, the saw mill is twelve miles southeast of Oregon City. They get their timber for sawing off their neighbors. They did not take homesteads; they did not file on any lands at all. He has not taken a homestead and never tried to take a homestead out in that country. There were a lot of even sections that were public lands when he went out there with his father, but he was not old enough to take them. He was twenty-one about 1889, but there were no public lands to speak of there at that time, it had been taken up. As far as he knows the people were living on all the quarter sections in the even sections.

Q. I know, but that would make about four people to every section of this government land prior to 1889. Now, you don't mean to say that there were four families living on every even section in that country prior to the time you became of age so you could take some, do you?

A. Well, I don't know as to that.

Whereupon witness testified that he is about four or five miles south of Hyland, six miles east of Meadowbrook, a mile from Colton, northeast, and lives on Milk Creek, in the northeast quarter of section 34. There is a man by the name of Swanson who lives in section 33. He got his land from the Swedish Colonization Company, who got it from Mr. Jones. Jones had a lot of land there and some of it he got from the railroad company, and some he does not know how he got. He knows where Canyon Creek is. He notices on this map that

the green colors on these lands in there, different sections and parts of sections, and that the land colored green are unsold lands of the railroad company involved in this suit, and that colored blue is sold land, formerly railroad land, and not involved in this suit, and he notices the green is pretty scattering around him and around Colton where he lives, he thinks there is not very much railroad land left there compared with the whole section of the country. He notices the yellow field on this map, showing lands that the company did not get, but which went to people under the donation land law, or homesteads or pre-emptions, before the railroad company got its title, before the grant took effect. Most of that land west of him is in the yellow field. These lands on Mill Creek are not level little bottoms. Towards the upper end, it is just narrow bottoms and as one gets down further it widens out. He did his threshing in the country north, west and south of Colton; threshed in Hyland, but did not go in around Springwater, or far up as Schubel. He was out as far as Clark's, about six miles. He would think that he went over about twelve or fourteen miles square in threshing. Most of his threshing was done west, north and south of where he lived. They threshed over on Dickey's Prairie, just north of Molalla River. Dickey's Prairie would be off a little south and east on the north side of the Molalla River, the north Molalla River, in the Molalla bottom, which is pretty good farming country in there. He could not say as to whether that country on the Molalla River had been settled for fifty years, or whether it was do-

nation land claims in the early days. Once in awhile there are old farm houses. They mostly built new houses in there. What they call Dickey's Prairie, is an old settled country. He could not tell how many bushels of wheat he threshed in a season of fifteen days without his book. He threshed for so much a bushel, and they threshed about a thousand bushels a day this year. A dry ordinary season, other than like August just past, they would thresh fifteen hundred bushels a day if they got a good run, but they did not average a thousand this year. They threshed oats, too. They did not thresh oats or wheat up in this country east of where he lives, not in the mountains. He would say that when these lands were cleared and grubbed of timber two-thirds of it could be plowed. One could not do it before it was cleared. He could not tell if any of the unsold railroad land has good timber on it, for he never cruised it any, and never paid any attention to the timber. He does not know whether it has a thousand or a million feet to the quarter section, or to the eighty, or anything about that, and all he means to say is that when the timber is cleared off, whatever there is, there is two-thirds of it that has soil and is sufficiently level that it could be farmed. His father lived on his place until he died; homesteaded it thirty-three years ago, and had twenty-five acres cleared altogether of the 160 acres. They had stock there—two cows, one hog and a team. Most of the ranchers up there are going into the dairying business now. They don't raise much stock. Down towards his place they are trying to get into the dairying business.

He has never been up in the mountains there. It would be hard to tell what is the average value of this land of his father's, and like land, which belongs to the railroad company, per acre on an average, but he would say that his father's place there was worth something like $25.00 an acre. Around Colton there is not much valley land, it is mostly rolling land, and he would think it is worth about twenty or twenty-five dollars an acre. Some of that which he threshed on was worth more than that over on Dickey's Prairie and around Meadowbrook. He could not say, taking 160 acres or 80 acres in a tract, how much it would be worth, but he supposes it would probably be worth from twenty-five to seventy-five dollars an acre, around Dickey's Prairie in there. Colton has a postoffice and store. There is no postoffice at Clarkes. There is no postoffice at Meadowbrook either. At Molalla there is a postoffice and store; he is not sure whether there are two stores there or not. Elwood is just a postoffice. There is no postoffice at Hyland or anything. At Liberal there is a store. There is a flouring mill and lumber mill at Union Mills. At Mulino there is a flouring mill and two stores and a saw mill. There is no postoffice at Schubel. He never was at Dodge, does not know anything about it. There is no postoffice at James. He is not acquainted at Springwater—in that part of the country. He is twenty miles southeast of Oregon City, and about twenty miles from Canby and Barlow. The Molalla is quite a little stream. He does not know where it heads; he never was at the head of it, and he could not say if it heads up in the

Cascade Range; it is up there somewhere in the eastern part of Clackamas County. He never was up there and does not know anything about it.

Whereupon on redirect examination witness testified that he does not know who composes the Swedish Colonization Society that handled the lands bought by S. W. R. Jones from some one, he does not know who Jones got it from; that land was situated there in section 35, that is east—he owned that, and then in township 5 south of him. Jones owns some in there, he owned something in the neighborhood of four thousand acres. The Swedish Colonization Company bought that of the Jones heirs. The company bought the whole piece—the Swedish Colonization Company—and they distributed it out just as one wanted it. One could buy five, or ten, or forty, or eighty acres, whatever he wanted. They have disposed of most of it, and most of it is occupied. They are going ahead and making farms out of it, and people are living on it. Some of them are making a living off that land. Some of them are working out. There are poor men who work out once in awhile to get groceries, so they can improve their land. They are still clearing the land. The Swedish Colonization Society bought this land about four years ago, and then there are new ones coming in ever since, every year. He is not sure whether it is more than four years ago; he is not sure about it, it might have been longer than four years; the records are more accurate on that subject than his memory. This land that the Swedish Colonization Society has distributed among settlers is just

about the same as the rest of the lands in that general vicinity. He has never been but about a mile east of his place, just across section 35, on 36. Section 36 is just about the same thing as his. He can see the land beyond him there, east. After one gets east of 36, the foot of the mountain begins and he is in what is called the foothills in section 34. Those foothills increase as one approaches the mountain. According to the geological survey, the altitude where he lives is about seven hundred feet.

Whereupon on recross examination witness testified that he knew S. W. R. Jones in his lifetime; does not know whether he is dead or not. He used to live on French Prairie, out near Gervais, and the last he heard of him he was living, and was a speculator in lands, and bought lands wherever he could. He does not remember just when the Swedish Colonization Association bought these lands from Jones or his estate. It seems to him that it was like four years ago, but it may be longer than that. He does not know what they paid an acre for it. This Swedish Colonization Association belongs at Colton, and he does not know who composes it; he knows some of the men who are in the company; they are farmers making homes there. They come from different places, some of them from Dakota, some from Nebraska, and different Easten states, but he could not tell how many of these farmers are in this Swedish Colonization Association. Just a rough guess he would judge about sixty families of them who moved in there, all on this four thousand acres, which they are farming and clear-

ing up. He does not know what they paid for it an acre. They bought whatever they felt like. Some of them had means, and some of them had to borrow money to buy their places, and the Colonization Society helped them. It is a sort of community of interest that these Swedish families had when they organized this association, and are dividing the land among themselves. He threshed grain for them this year. He could not tell how much. Some of them did not have over 150 or 200 bushels, and then some of them had more. Part of these people are east in 35, and part of them are south of where he lives. He threshed for two farmers in section 35. He thinks there are about four families and one bachelor who live in section 35, and the rest are about from a mile to two miles west and south of him, where he threshed. This land is mostly burn. It has been burned off before it was settled; burned a great many years ago, some forty or fifty years ago, maybe longer. He does not know what that land is worth that these people have but it is about the same as his.

Whereupon J. L. BOYLE, called as a witness on behalf of complainant, being duly sworn, testified that he is fifty-two years old; resides in Canyonville, Douglas County, Oregon, and has lived in Douglas County, where he was born, all his life. He was born and raised in section 7, township 30 south, range 4 west, and the last four years has lived in section 27, township 30 south, range 5 west. The place where he was born in township 30 south, range 4 west, was the donation land claim of his father, who filed on that donation land claim

some time in the fifties. His donation land claim was 160 acres, and then he had a pre-emption of 85 acres. He has been a farmer all his life, excepting the last four years; has been personally engaged in farming. He has been a justice of the peace several times, a deputy assessor and notary public, and is a notary public now. He was deputy assessor in 1898, 1899, 1900 and 1901, and as such was required to examine the lands assessed in township 30 south, ranges 1, 2, 3, 4 and 5 west. As deputy assessor he worked in that locality, and made the assessments for those townships, and in the vicinity of where he was born and raised. He thinks he is familiar with the land in those townships, having been born and raised there and over them more or less all his life. As deputy assessor he also had to visit all the settlers in that community and assess their personalty and make assessments on their real property. There are railroad lands in the immediate vicinity of his father's donation land claim. Sections 19 and 20 are immediately south of his father's donation land claim in township 30 south, range 4 west. His father applied to purchase railroad land in the seventies; his father and a partner in the stock business made a filing on 160 acres each. His father's was in section 19 and that of his partner, Gilbert McNear, was in section 29. They never obtained the land. He did not exactly make an application, but Mr. Britt was the land appraiser of the company and he made an application to him and offered him $2.50 an acre as the railroad land agent, and Britt said he would put the matter before the company, and he came back

afterwards and appraised the land. This land has all been surveyed since. It was the south half of the south half of section 19, 120 acres of which that he applied for. There were 160 acres there vacant, but he only tried to buy three forties. That could be made a good farm, but he did not intend to use it as a farm, but as a stock range to raise stock on. Britt told him that he could have one forty of it for $2.50 an acre and the rest of it for $5.00 an acre. Britt was there and made an examination. He could give the name of one farmer or settler in section 19, township 30 south, range 3 west, who owns lands adjacent to railroad land. B. H. Fate bought 160 acres himself—80 acres that he paid $2.50 for and 80 acres $3.50 an acre for, and he bought a man's right, a man by the name of Andrew Werley, he bought his railroad right and paid $5.00 an acre for it. Werley contracted for the land. Tate took up the contract and paid for the land. He has it practically all under cultivation now. Practically all the railroad land adjacent to that which is now owned by the company, can be made homes. He does not know just how much of it there is, but the greater portion of that can be made good homes; there is no question about that. The even section there are all taken up and homes are on them. The odd sections are railroad lands and, he understands, off the market. That applies generally throughout this territory with which he is acquainted; that is, the even sections are settled upon and the odd sections are vacant.

Q. Now, Mr. Boyle, from your acquaintance with this territory you have testified that you have been over

in assessing and have lived in all your life, what percentage of the lands, in 160-acre tracts, could be used as homes; that is, a settler could go on there, take 160 acres, and support his family as the ordinary settler does?

A. Do you mean that it should be tilled, plowed, cultivated, or as a general purpose as a farmer uses his land?

Q. As a farmer uses his land.

A. Well, I should say that he could use the greater per cent of it. I am satisfied, from my observation as an assessor, that fifty per cent of it can be tilled.

Q. Fifty per cent of the lands could be tilled?

A. Yes, sir; in that part of it that I assessed and went over, I am satisfied that fifty per cent of that can be plowed. But it can all be used for pasture land. Now, I am not saying that there isn't timber on it at all, because there is a great deal of good timber on that land.

Whereupon witness testified that in this territory the soil is fertile. They grow wheat, oats, corn, barley, prunes, apples, in fact all kinds of vegetables and fruits, except tropical fruits. They raise stock there. Prunes is the main fruit that they raise; also corn, wheat, oats and barley are the main grains. The people who have settled on the land have the greater portion of the ground cleared and in cultivation. They have gone in to the timber in there and cleared it.

Q. Mr. Boyle, in your opinion, what has been the effect of the failure of the railroad company to comply with the conditions of this grant in refusing to sell land to actual settlers at $2.50 an acre, and in selling the lands in large quantities?

A. It has retarded the development of our country.

Q. In what way, Mr. Boyle?

A. By preventing settlers from settling on this land. But now, if the railroad company would sell it at $2.50 an acre, I don't doubt but what it would soon settle up.

Whereupon witness testified that the demand for land in this locality for settlement purposes is good and has increased in recent years. The first settlers in this country took the bottom lands and the next best the higher lands, and they are now going on up. The bottom land is usually considered best, that is true, but in his referring to bottom land one must understand that the early settlers got on the larger streams and took their homesteads, but where he lives the creek bottoms are just as good land, but it is more narrow. Land of this same general character is being cultivated in the county there and used as homes by farmers.

Whereupon on cross examination witness testified that he assessed these lands around Canyonville for the years 1898 to 1901, both inclusive; that is, four different years. He would not be willing to state the number of acres of railroad land that he thinks he assessed, that

the company owned at the time he made the assessment, and could not approximate, for the simple fact that he only assessed land that the company had actual patents for. Ranges 2, 3, 4 and 5 are within the limits of the railroad grant; the northwest part of 1 is within the limits, and the southeast part is not, that is in the idemnity belt, and part of that which he assessed is within the place limits, or within the twenty miles, and a part within the indemnity. He assessed in township 30 south, ranges 1, 2, 3, 4 and 5 west. There are thirty-six sections in a township, each section containing 640 acres, and every odd section belonging to the railroad company, with the exception of what had been taken up, and barring two sections in every township for school land. Canyonville, as shown on Defendant's Exhibit 259, lies almost due east of Riddle. He sees that this yellow belt shown on Defendant's Exhibit 259 is all through along the Umpqua River and around Riddle to up towards Myrtle Creek, and that map, according to the legend, represents lands that were within the place limits of this grant, but which had been taken under the donation land law, or the pre-emption law, like his father did, before the railroad grant became effective along about 1889. Canyonville is in section 27, township 30, 4 west. That is an old settled part of that country, and his father's donation land claim is in the next township east, sections 7 and 18. The old home is in section 7, but under the donation land claim his father took part of section 7 and part of section 18. There were other donation land claims along the Umpqua

River, on both sides of the river, and there were a lot of donation land claims taken around Riddle, clear up to Myrtle Creek, and on down to Roseburg, Winchester, Oakland and Wilbur, in all that country. General Lane lived and died at Roseburg, and was the first Governor of Oregon, and the first United States Senator, and that was one of the oldest settled sections of the State of Oregon, around Roseburg. It was first settled in the Willamette Valley, down about Salem and Oregon City, and Clatsop, near Astoria, down on Clatsop Plains. Judge Deady used to live and do business out at Douglas in that Umpqua country. He generally practiced law in Roseburg. There have been sales of railroad land in the vicinity, in township 30, ranges 1, 2, 3, 4 and 5 west, but none recently that he knows of. He had this talk about buying this piece of railroad land with Mr. Britt in 1892, he thinks it was, and the company offered 40 acres to him at $2.50 an acre, and the other 80 acres at $5.00 an acre, and he did not buy because he did not care to pay $5.00 an acre for the land. It was worth it then, and is worth more today. In section 30, an adjoining section to 19, Hopkins sold 160 acres for $4500 cash, just the same kind of land, adjoining the very identical part. It would be pretty hard to tell how much this 120 acres would be worth an acre today. Hopkins cleared his land, had it all cleared off and under fence. This other land is not fenced, but he would be willing to give a man $10.00 an acre for this 120 acres if he would give him a deed for it—it is worth that in his judgment. Hopkins' land had improvements on it, and this land

has not. He would give $10.00 an acre for it, but would not give any more. This railroad land that he assessed in the two lower west townships is not mostly timbered land. The other township the greater portion of it is timbered. Douglas County did not have a cruise of these lands when he assessed them. They have now, he understands. There are saw mills and timber holdings in the vicinity of these lands. There are three saw mills in the immediate vicinity of Canyonville. In this territory to which he refers there is the Michigan Land Company, represented by the Gardner brothers, that owns land, but he does not know how many acres of timber land they own. Timber is valuable now. He thinks timber first became an item of value for the purpose of market and sale in that section of the country about eight or ten years ago, and timber claims sell from eight hundred dollars to a thousand dollars, depending on the cruise. The saw mills pay from 65 cents to one dollar a thousand for timber where they buy it, depending on the stand on the quarter section as to what it is worth for timber. The demand for timber is not very active. It has never been very flush up there because they are six miles from the railroad and fifty-one miles from the sea. If there was a railroad out from Myrtle Creek up the Umpqua River into the Cascade Mountains so that this timber could be logged to it or hauled to it, the timber would have a very large value, and so would their agricultural land. Transportation is certainly needed. There is a great deal of heavy timber on the South Umpqua up in the Cascade Mountains, and all that it needs is trans-

portation to make the timber and the land valuable.

Q. The first value, though, would be the timber, wouldn't it, primarily.

A. No, I am a farmer. I look at it from the other side.

Q. Now, suppose that you had a quarter section out there near Canyonville, or on the Umpqua River where it could be logged, that had on it six million feet of merchantable saw timber, and the soil was good, but it had this heavy timber on it, and the company would sell that to you for $2.50 an acre, as an actual settler under this law that the government is trying to enforce or assert in this case, don't you think, if you got a good title to that 160 acres, of good timber land, and it went six million feet to the quarter, that you could sell it for about six thousand dollars for the timber alone.

A. And keep the land?

Q. Yes.

A. Sure I would.

Q. Well, don't you think you could do that?

A. No, I don't think so.

Q. What do you think you could get for it?

A. Well, that is a pretty hard proposition. They are selling from $800 to $1000 per claim now.

Q. I understand.

A. Now, if a railroad company would go in there

it could not possibly increase the valuation so much, could it?

Q. Well, I am asking you. You said that the stumpage value was about 65 cents.

A. From 65 cents to a dollar a thousand.

Q. Yes, to a dollar a thousand. Now, if it was a dollar a thousand, and there was six million feet on the quarter section, that would be six thousand dollars, wouldn't it?

A. But now wait just a minute.

Q. Well, answer the question and then we will argue it.

A. That is true. That is true. But now we will take the Alder Creek Lumber Company, one mile west of Canyonville, bought from Mr. Biggs six years ago, 160 acres of land that has timber on, 160 acres of land, and they have not taken it half off yet. Well, now, if a timber company is going to be twenty-five or fifty years getting off the timber, why, the man would not live long enough to farm his land, would he?

Q. Well, now, isn't that the trouble with this land, and why it was not settled before the timber had any value was because they could not market the timber?

A. No, sir.

Q. What was it?

A. The trouble has been there has been too much open land to take up in Oregon. Now, people are tak-

ing up the timber land just as fast as they can get it, and clearing it in my section of the country just as fast as they can.

Q. Well, now, as a matter of fact you can go down around Myrtle Creek and on the South Umpqua, along the place where your father had a donation land claim, and buy that land that was settled fifty years ago for fifty dollars to seventy-five dollars an acre, can't you?

A. No, you can't, not improved land.

Q. What can you get it for?

A. It is selling at—the place adjoining father's own homestead place was sold for $16,000.

Q. How many acres?

A. 160 acres.

Whereupon witness testified that the place adjoining his father's homestead which sold for sixteen thousand dollars was a place that had prunes that were bearing and selling in the markets of the world. These lands are not all covered with fine prune orchads. Some of them have prune orchards that are twenty-five years old. The areas around Myrtle Creek there have been supplying the prune market, and prunes have been a staple for twenty years.

Q. And the prune orchard of course would bring a big price. But I mean the land that is not put in prune orchards, or that is not in that high state of cultivation like some of this land around Medford, with an orchard on it eight or ten years old, the land is worth

about $50 to $75 an acre, isn't it, before the orchard is put on?

A. I think you are just about right. Without an orchard the land is probably worth, would sell for $50 to $75 an acre. With an orchard on it——

Q. A great deal more.

A. Now, the one that I said sold for $16,000 only has 18 acres of an orchard on it.

Q. But eighteen acres of fine prune orchard there, at the prices that rule, would be a fairly good piece of property, wouldn't it?

A. Surely, surely.

Q. Some years you don't make anything on the prunes, and other years you make a good thing? That is right, isn't it?

A. Yes, sir.

Whereupon witness testified that never in his experience has it been that prunes would not pay the cost of drying. Some years prunes were really an unprofitable crop, but that was before he was engaged in the business. If the land had timber on it, it certainly could not be used for agricultural land until the timber was removed. Some of this timber is inferior. The better the land the better the timber.

Q. And the value of a quarter section depends largely upon the amount of timber there is on it? At present in the market, I mean.

A. Well, not true, not so altogether in our locality. I am speaking from my immediate vicinity. We do not consider the timber as you people do here probably, because we do not consider that 160 acres that is not worth more than $800 or $1000, it hardly pays a man to file on it. Those people who filed on land, filed on timber claims, are selling those claims now for $800 to $1000; and I think the Gardiner brothers would so testify if they were here.

Q. Well, what are they selling these $800 or $1000 claims for? What are they selling them for? Why don't they stay there and make homes?

A. They were men who were located by timber men, who never intended to make homes there.

Q. Well, then, is that the way these lands have been taken up out there?

A. Well, some of it has been taken up that way, sure.

Q. Timber companies get fellows to go out and enter the land?

A. Well, I don't know that now, but I do know that a great many of them have sold their claims to the Gardiner brothers. It is a Michigan firm—Michigan people.

Q. I understand they have only got $800 to $1000 for the 160 acres?

A. I know of three claims that have been sold for $800.

Q. Did they commute and pay up?

A. They paid for their claims, yes.

Q. That is to say they commuted their homesteads?

A. No.

Q. What were they?

A. They were timber and stone, taken up under the timber and stone act.

Q. They were taken up under the timber and stone act, where they didn't have to live on the place?

A. Yes, sir.

Q. They had to go through the farce of swearing that they went and looked at it and saw that it was timber?

A. Yes, sir.

Q. Bought it at $2.50 an acre, or whatever the government price was above that?

A. I don't know what the government price was.

Q. As soon as they got the title why then they sold it to these timber companies?

A. Some of them have.

Whereupon on redirect examination witness testified that the majority of these people who bought lands under the timber and stone act were principally residents of towns who went out there and purchased the lands under the timber and stone act, which required no residence, no necessity for cultivation or improvement of the

land, and the United States used to sell that land at a flat price of $2.50 an acre until within recent years, but it now bases the price upon an assessment or upon a cruise that the government makes of the land. He does not know of any homesteaders who have gone up there and taken up claims merely for the purpose of getting the timber, who abandoned their claims as soon as they proved up. The Hopkins claim sold for $4500, 160 acres—what they call a mountain ranch. That was in section 30, adjoining section 19, the township that his old home is in. It was in the mountains. The other sale that he spoke of, the 160-acre tract, for $16,000, was an old donation land claim, that was a farm; it has eighteen acres of orchard on it, and the rest of it was farming land, the majority of it. There was about forty acres of what they call waste land—grazing land, too steep to farm. He has a general slight knowledge of the territory south of township 30. He was never over that very much. In township 31 south, ranges 3 and 4 west, he made the assessment there one year, and then turned it over to a Mr. Redfield who was deputy assessor in that precinct. That land is practically the same as that about which he has testified; it is practically all the same all over that country from Roseburg south to the boundary line of Douglas county. He has hunted and been over it, herded sheep over it and drove stock over it quite often. He has been over the lands in township 29 south. He does not know that he has ever been in township 28, but he has been in township 29, and the same condition exists as to that land. Myrtle Creek is in township 29,

runs along through 29 and 28, and is settled from practically the head of Myrtle Creek. Day's Creek heads in township 29, and is settled—there are settlements from its mouth to the head. These settlements are more or less along the streams which run up into the mountains, until one gets in the Elk Creek country, in range 1, in the same range that he lives in, one west. That is more of a plateau, more rolling; quite a number of stock ranches in there. They do not pretend to farm, but raise fruit and stock. There are streams running extensively through these lands. By streams he means creeks, small streams leading into the river or larger creeks. The purpose of settling on the streams is in order to have water, and one gets more or less level land on the creek bottoms.

Whereupon J. H. TURNER, called as a witness on behalf of complainant, being duly sworn, testified that he is forty-eight years old, lives at Mulino, Clackamas County, Oregon, and follows carpenter work mostly now. He has a little place that he lives on and works on odd spells. He has lived at Mulino about four years, and came to Oregon in 1887. He lived east of Portland eight miles one year, and in 1888 moved into Clackamas County. Mulino is, he believes, in section 17, township 4 south, range 2 east. He has 20 acres in section 18, His land is on Milk Creek, west of Mulino. He has been all through the lands shown in green colors on Defendants' Exhibit 259, around Mulino, and he has been at Hyland, Springwater and Elwood. Elwood and Dodge are in township 4 south, range 4 east, shown on this map. He used to own forty acres there on Milk Creek, but he

cannot tell the section it was in, but it was right in there by Elwood. There is some railroad land in that Hyland country, between there and Elwood, but he only knows of one forty of these railroad lands shown on that map. He is acquainted with that general country in there marked with the green markings, has hunted birds all over it. He is acquainted with the general character of it, its formation and the soil, because he worked around Hyland there, farming for other people, and his father had a place there, which witness farmed. He rented another place around Hyland there, and owned the forty acres in there at Elwood. He knows pretty nearly about what the land through that part of the country is. He farmed about five years there in Hyland, and before that for other people; he never ran a place for himself, but worked for other people.

Q. Well, Mr. Turner, on this railroad land that you are acquainted with, have a general knowledge of, what is your opinion as to whether that land is suitable for settlement in 160-acre tracts?

A. Well, in that there locality, yes. But as far as knowing where the railroad land is located, I don't know anything about it.

Q. You didn't know whether they were railroad lands or other lands?

A. No, I didn't. There was some that had bought railroad lands, so they said, but then I don't know as to that. But take it through that country there, it is good soil. They raise fair crops. They raised around

Hyland there, when I was there—that has been fourteen years ago though since I was there —they raised from about fifteen to twenty bushel of wheat on an average, and from about forty to sixty bushel of oats.

Q. What would you say as to this land being suitable for settlement in 160-acre tracts, that is, if a man would want to go on that land, 160 acres of it, and farm?

Mr. Fenton: Defendants object to that unless the witness knows of the railroad land that is of that character. You may answer.

Q. Do you understand the question, Mr. Turner?

A. I don't know as I really do.

A. Well, if a man would get it cleared up, it is a good ranch, good ground.

Whereupon on cross examination witness testified that he does not know much about these railroad lands around Mulino. There is not much railroad land in there. That is an old settled country around Mulino, and there is just a little railroad land lying unsold east of Mulino, towards Springwater. The Molalla River is an old settled part of Clackamas County, and Mulino is on Milk Creek. It is quite a stream, and affords water there for grist mills. There is one saw mill in Mulino, which gets its logs up Milk Creek; about the farthest that they are getting logs so far, is at a new saw mill which went in there lately about a mile and a half away, but there used to be a mill there years ago. This land in there east of Mulino is mostly timbered. It is quite a

ways up to the Cascade Mountains, but then one goes east up towards Clarks, and it is principally timber and brush all the way, there is some saw timber up there. Up on Buckner Creek there is some good timber up in there. He means that when the timber is taken off of this land it has sufficient good soil and is sufficiently level that it could be farmed, or most of it; that is what he said, if it was cleared it would make good ranches. He never took a homestead and never applied to purchase any of this railroad land, and never owned any of it. He owns twenty acres of land down at Mulino, it was all timbered. He has about three acres cleared, something near that, he never measured it, the rest of it is timber and brush. He has some saw timber on his twenty acres. He offered the timber stumpage on it for $1.25 to a man the other day, the market price ranges from $1.00 to $1.25 and $1.50, some are getting $1.50, but not very many, there are a few. He supposes that there would be perhaps 150,000 feet of saw timber on his twenty acres. It has been partly logged off. There is some big timber left. He does not know why the big timber was left, but they just took off what was the handiest. It was logged off by James Atkins about six or seven years ago, something like that. Witness had a brother-in-law that he got the timber for. He would not take less than fifteen hundred dollars for these twenty acres, and thinks it is worth $75 an acre. He has bottom land on it, and in one way his land is better than the general run of land because it is made land, better than the hill land for some things, as far as fruit

is concerned, they can beat him to death, that is, the upland is better for fruit, for apples and such as that, much better.

Whereupon JOHN ZEEK, called as a witness on behalf of complainant, being duly sworn, testified that he is sixty-four years old and resides near Canby, Clackamas County, Oregon, and has lived in Oregon more than forty years. He is a farmer at present, was formerly a blacksmith, and has been engaged in farming about three years. He lives in an agricultural community and has been acquainted with the business of farming during his residence in Oregon, and is acquainted with the lands that are suitable for tillage, useful for farming purposes to a certain extent. He has lived in Clackamas County twenty-five odd years, and for part of the time in the southeastern part, that is, not far beyond the center of east and west perhaps, but pretty well towards the south side. Part of the time he was in Molalla, most of the time in and about Canby, and some of the time in New Era. Referring to Defendants' Exhibit 259, he does not know anything about the range, but knows about the town of Molalla, and four section corners there where the town of Molalla is. The map shows Molalla at the corner of sections 4 and 5 and 7 and 8, in township 5 south, range 2 east. He notices that the lands colored in green represent on this map the unsold lands of the Oregon and California land grant, and he is acquainted with some of those lands south and east of Molalla about seven miles, maybe a little more than seven miles south, and he don't

know just how far but several miles east, approximately five or six miles along the Molalla River. There may have been a new postoffice established in the vicinity of James since he was there, it was thirty-two years ago that he was there. He knows where Wilhoit is, and is somewhat acquainted with the unsold lands of the railroad company in the vicinity of Wilhoit. He is not acquainted at Colton, but knows where it is. He has never been over in that vicinity, nor at Dodge or Elwood. South from Molalla to Soda Springs, and a little perhaps the other side, as they would go hunting, and east from Molalla five or six miles, where they would go out hunting and fishing at times through that section of the country, he has traveled over pretty well; that is, about five or six miles east from Molalla, and about seven or eight miles south, and he is acquainted with a portion of the unsold lands of the railroad company in that territory. He was looking for land somewhat himself when he was out there, as well as hunting. When he would come to a piece of railroad land, those that he was with would know what was railroad land and what was government land and they would tell him and he would look at it. He is acquainted with the general character of these lands in that community. Some of the unsold lands of the company were very desirable; that was his estimate of it. Some of it was a little bit rough, but there was a very small portion of it, in his estimation, but what could be cultivated in one way or another. He was looking for land, and when he would come to a part of this land that was railroad land, he

would take notice of it in particular to see about how much there would be that could be cultivated and so on, and the price in the neighborhood surrounding, and there were a good many pieces that he thought was very desirable land for farming purposes. Some of the land in this vicinity was quite rolling, some of it was what one would call rough land, and there was some that was compartively level land—not very large areas of really what one would call level land, like there is here in the Willamette Valley, but there was a large portion of it that could be cultivated. The topography of the ground, he would call rolling. He is not acquainted at present with the demand for land by settlers in that community, but at that time the demand was considerable. Nearly all of the government land had been taken up — one could not find anything that was vacant, scarcely anything at all. His acquaintance with this area would go back about thirty-two years; that was the time that he was there, thirty-two years ago. He has just passed through that country since, but lived there at that time and carried on business at Molalla, and he has retained a general knowledge of the land there at all times; he has not forgotten it by any means.

Q. If the railroad company complied with the conditions of the grant and opened this land to sale to actual settlers at $2.50 an acre, what is your opinion as to whether it would have been taken by actual settlers?

A. I think that if the land had been available, it would nearly all have been taken. The demand, I be-

lieve, was such, and the wants of the land was such that it would have been nearly all taken.

Q. When you say if it had been available, what do you mean by that, Mr. Zeek?

A. Well, I mean that if they could have got it from the company, there has been so many years it has been out of the market that you could not do anything with it; that they could not get it.

Q. This territory that you speak of, how does the railroad land lay there generally as to its being a compact body or in scattered tracts?

A. Well, I really don't know exactly how much would be in a tract, but then there were a good many places we could get a hundred and sixty acres in a body and other smaller tracts.

Q. Quite a number of tracts of railroad land laying in this vicinity.

A. Well, as to the amount of lands lying contiguous to each other, as to that I could not really say, because you travel around quite a little. We would come to one piece of railroad land, and then we would go a little further around and find another place, and so on around. I didn't take particular notice of about how much there would be one joining the other. But there was 160 acres in a good many different pieces.

Q. Are there any lands of similar character settled upon and farmed in that community, Mr. Zeek?

A. Yes, all the Government land there was there

was of similar character, and it was nearly all settled upon at that time.

Q. Is that settled upon by farmers?

A. By farmers. Yes, by farmers. They would not undertake to farm it all, of course, but they would farm what they needed to, and they would have some stock.

Whereupon on cross examination witness testified that he now resides near Canby, in Clackamas County, and has so resided there in the neighborhood of about twenty odd years. The nearest mail route to him is Canby, four miles, east and north. Canby is a level prairie country. Some call it the lower end of the Molalla Valley; it is close to the mountains. Canby is on the Southern Pacific Railroad, which railroad is owned by the Oregon & California Railroad Company, and leased to the Southern Pacific. He lived in Canby part of the time, carrying on business in Canby, before he moved to his farm near Canby. Prior to going on to the farm, he was at Canby three years. Before he moved to Canby he came from Sellwood, which is just outside of the city limits of Portland. He lived at Sellwood about a year, and before that he lived at Clackamas Station, in Clackamas County, Oregon, this side of Oregon City, on the line of this same railroad. He lived at Clackamas Station about a year, and before that he was at Mulino. He moved around considerable, but he thinks he was at Mulino just a little while, not more than two or three months, doing blacksmithing there, and before that he

lived at Molalla Corners, where he had a shop; that is now the town of Molalla, which is not a large place; it was not very large at that time. He does not know its size now, he has not been there for a few years, ten years or more. He passed through Mulino about two and a half years ago, something like that. He does not think his knowledge of the country is just casual, he knows something about it. He has not been over all of the land around Mulino, perhaps over not entire sections, but in more than two or three sections around Mulino. He does not know exactly how far east of Mulino he has been, but he has been up above Meadowbrook. About a year and a half ago he was out to Mulino, and went up above Mulino to what is known as Schafer's mill, almost to Schafer's mill, going up the Meadowbrook road. He does not know how far Schafer's mill is above Meadowbrook, but he thinks two or three miles, something like that. Molalla is out in the old settled part of Clackamas County, and from where the road called the Oregon City road strikes the Molalla River, he would think it is about three miles, perhaps a little more or less. He does not know that he could describe the quarter sections or half sections or eighties of this railroad land that he was over when he was out there at the time of which he speaks; he cannot tell in what township or range or section it is in. He has been east of Molalla five or six miles, a little more or less, up the Milk Creek, up past Meadowbrook, and then to the left out to Springwater. He does not know just how far it is, but he has been up beyond Molalla five or six miles.

Molalla is shown on Defendants' Exhibit 260; also Molalla River, Mulino and Meadowbrook. Meadowbrook is northeast of Molalla. Mulino is not so far up. The map may be correct. The river runs north at Canby, and Canby is east of the Molalla River. These railroad lands that he saw were about five or six miles from Molalla and south around Soda Springs. He recognizes Wilhoit as shown on the map and it would be seven miles from Molalla to Wilhoit by straight line, and he was beyond Wilhoit a mile or so, something like that; and then east of Molalla five or six miles.

Q. That would be, one, two, three, four, five, six. Well, now, you see six miles wouldn't get in that range, wouldn't get over five tracts of railroad land now unsold, of about eighty-acre tracts, or 400 acres of railroad land in that vicinity, and you wouldn't get in the other direction, from Molalla south to Wilhoit, but about two sections scattered around on Rock Creek, and between Wilhoit and Molalla. Now, are those the lands you saw?

A. Well, you don't think for a minute that I am trying to tell you what there is unsold now. I am telling you what was then.

Q. When was this, now?

A. About 32 years ago. I am not telling you anything about now.

Q. What you are testifying about now may be relating to land that the company owned 32 years ago?

A. Yes, in this same tract.

Q. Oh, I see. So that if they only own these small parcels at the present time, you could not say from your testimony what the character of those parcels is?

A. Not any particular parcels, no.

Q. All you can say is in a general way that you were out there 32 years ago, and you saw some railroad land that looked to you and was in your judgment fairly good agricultural land?

A. Yes. It was extra good, some of it.

Q. Well, it was not any better than the even sections.

A. No, but they could not get them, that is the reason—the even sections were all taken. There was no Government land to be taken there that I could find.

Q. It had all been taken under the donation or homestead or pre-emption law?

A. Yes, sir.

Q. A good deal of it had been taken under the donation land law, hadn't it?

A. Well, I don't know whether there were any donation land claims there or not, but I don't think there was. There may have been, but I don't think there was. I don't know of any.

Whereupon witness testified, referring to Defendants' Exhibit 259, and the yellow field shown thereon, that there was some land taken under the donation land

law there in Molalla; he thinks one section cornering at Molalla, that was Sam's section, which had been taken under the donation law. The homestead law was passed, he thinks, in 1862 or 1863, and the pre-emption or donation law before that. There was not very much timber on any of this land that he was acquainted with. There was some, but not very much, it was mostly in a burn, mostly burned land. Thirty-two years ago, so far as he could find out, the piece that he bought from the railroad company, that he bargained for in the Springwater district, the company was selling it all the way from $3.50 to $4.00 and up to $10 an acre. The more timber on the land the higher the land, the higher the price. Timber at that time did not have very much commercial value, but they estimated the timber land as being more valuable than that which did not have timber.

Q. Well, now, wasn't there a good deal of railroad land in here about that time that could have been bought for $1.50 an acre?

A. Not to my knowledge.

He bought two little tracts from the company in the Springwater neighborhood, but he does not remember what sections they were in now, it has been so long ago. He could not say how many acres, but he thinks it was something over twenty acres. He bought that to make a home on it, but never succeeded in living on it. He fenced in a part of it and plowed it and planted some fruit trees and garden stuff, but never got on the farm.

He paid from $3.50 to $4.50 an acre for it, and bought it for a home. He did not live on it because his circumstances would not permit him going at the time he needed to go. He bought it under the ten year system and made one payment, but did not pay it out. He forfeited his title by failing to make payments. He does not know if the company still owns the land. Part of it was timber land, and had a little good saw timber on it. He does not know whether it has been logged off. He has not been out there since about thirty-two years ago. He has not been there since he fenced in a part of it. He fenced in and cultivated about an acre and a half of this twenty acres, he would think. His family never lived on it, and he never had any buildings on it at all. He planted a little orchard, set out some berries and one thing and another, and he guesses that has all gone to waste. He does not know how many saw mills there are in the eastern part of Clackamas County. He does not know if the Molalla country is one of the oldest settled parts of Oregon. It has been settled a long time. He knows there are donation land claims there, and he would suppose it has been settled, and he knows according to history that Oregon City was the first seat of government in Oregon, and he read that the territorial council met there for many years in the fifties. He does not know whether Dr. John McLoughlin attempted to take a donation land claim where Oregon City stands but he failed to get a title to it. He has read something about it, but his memory is not exactly clear on that. He knows that Dr. John McLoughlin was the Hudson Bay

factor here in the early forties. He has read considerable about Dr. McLoughlin and knows historically that he died at Oregon City and was buried there, but he does not know anything about whether Congress perfected the title or attempted to perfect the title to that property where Oregon City stands. He knows that about Oregon City is one of the old settled portions of the Willamette Valley, and by the donation land claims out about Molalla he would suppose that it had been settled a good while, because the donation land law was repealed when the homestead law was enacted. He does not know just what year the timber market became active in Oregon or in Clackamas County, but he knows it has been quite a number of years ago; it has been as long as 1894 anyway, he would think, and timber has been in great demand the last few years. He never tried to buy any other piece of this railroad land; he was just out looking—what he knows from the settlers around where the railroad land lay; that was about thirty-two years ago, and the price of the land and so on, and then he would go and look at it. He does not know what the land around Molalla is worth, but around Canby it is worth all the way from $100 to $250 an acre. His place is four miles from Canby, and is an open farm; he has twenty-one acres there. He does not think land without any buildings on it can be bought there for less than $200 an acre, that is in the neighborhood of where he lives. They are expecting to have a railroad, an electric line, built across Canby out to Molalla, and on around by way of Silver, but the nearest

point from where he lives is about three miles to a railroad. The whole country is valuable now and rated at good prices all over around Molalla and down to Canby.

Whereupon on redirect examination witness testified that he thinks he contracted to pay for this railroad land $3.50 for part of it and $4.50 for another part of it. He bought it in two parcels—it was in two sections, and was adjoining the farm of a man by the name of Tucker, and was adjoining farming land—joined another man's farm by the name of Frank Bunney, who had bought some railroad land—and was just the same as lands that were being farmed adjacent, there was comparatively no difference. He contracted to buy that land for a farm. There was no timber on it to speak of, just a little bit on one part of it. That part that he bought, or most of it, is good level land.

Q. According to the bill of complaint, Mr. Zeek, there yet remains unsold in the township in which Molalla is situated—5 south 2 east—718 acres of railroad land in sections 3, 5, 13, 25 and 35, the tract in section 5 being only about four acres, and in section 35 being 400 acres; in township 6 south, range 2 east, where Wilhoit is situated, there is located in section 1, 420 acres; in section 5, 552 acres; in section 7, 475 acres; in section 9, 240 acres; in section 11, 40 acres; in section 13, 360 acres; in section 15, 280 acres; in section 17, 120 acres; in section 19, 315 acres; in section 21, 80 acres; in section 23, 80 acres; in section 25, 440 acres; in section 27, 160 acres; in section 29, 400 acres; in section 33, 480

acres, and in section 35, 600 acres of railroad land. And in township 5 south, 3 east, the township directly east of the township where Molalla is situated, there is 160 acres in section 1; 160 acres in section 5; 290 acres in section 7; 440 acres in section 11; 600 acres in section 13; 80 acres in section 17; 240 acres in section 21, and 560 acres in section 23—all unsold lands of the Oregon and California Railroad Company. Now, your knowledge covered a portion of these townships, as I understand—that is, south from Molalla——

Mr. Fenton: South from Molalla seven miles, and five or six east of Molalla.

Q. And in the township where Molalla is situated?

A. Five or six miles east of Molalla and about seven or eight miles south of Molalla. And the land that I speak of having bargained for was in the Springwater district.

Q. That is at Springwater?

A. Yes, I don't know the section now.

Q. Springwater is, according to Defendants' Exhibit 259, in township 4 south, range 4 east, in section 4. How far from Springwater was this?

A. It was only just simply a postoffice at that time, Springwater postoffice, and it was about—I should think about two miles, if I remember right, east.

Q. Were you acquainted with the lands in that vicinity?

A. With the lands?

Q. Yes.

A. I didn't look around very much. Mr. Bunney took me out there to show me this particular piece of land, and it was about what I wanted and about as much as I wanted, and I didn't look much farther. It suited me first rate.

Q. Your knowledge of that locality is somewhat limited?

A. Is limited, yes.

Whereupon W. H. KANDLE, called as a witness on behalf of complainant, being duly sworn, testified that he is fifty-three years old, resides at Springwater, Clackamas County, Oregon, seventeen miles east of Oregon City. Springwater is a little country town, a little village there, of store and blacksmith shop and boarding house and so on, small hotel—a farming community, just a small neighborhood town. His business is that of farming, in which he has been engaged all his life. He has lived in Springwater fifty-three years, was born and raised there, and now lives in the same locality. He lives on the old donation claim that was settled in 1852, which was in sections 4 and 5, township 4 south, range 4 east, he thinks. From his experience, he is acquainted with the farming business in Clackamas County, and has traveled quite a lot over the county. They produce most all kinds of grain, wheat, oats, vetch and field peas, and most all kinds of fruit—

apples, pears, cherries, prunes—most anything in the fruit line outside of peaches, all kinds of small fruit do well there. He has raised more or less stock in that country and has been in the dairy business quite a little bit. One might say that one-half of the farmers in the community of Clackamas County, in which he lives, milk a few cows and sell the cream at the Schleswick Creamery in Clackamas County, near the Clackamas bridge near Stone. There is a good demand for the products of the dairy. Referring to Defendants' Exhibit 259, Springwater is in section 4, township 4 south, range 4 east, and he lives on his farm half a mile east of Springwater. He is generally acquainted with the unsold lands of the Oregon & California Railroad Company, represented by the green sectional markings. He has been over them more or less. He is well acquainted with the lands, he thinks, as far as ten miles east of Springwater. He has been as much as forty miles east of Springwater in the mountains, but that would be on hunting trips, hunting expeditions up there. But for ten miles east of Springwater he has hunted over that and helped his neighbors gather beef cattle in the foot of the mountains and the foothills there, and been over the lands more or less all the time. He is not so well acquainted on the north side of the Clackamas River; that would be in the Garfield district, but he has been through there a number of times. He does not know just where the railroad land would lay, or anything about that north of the Clackamas River but east, on the south side of the river, he has been over more or less all his life,

ever since he was a little boy, and his knowledge as to the northeast is of a more general character than east. Southeast of Springwater he would be acquainted with the lands out to the foothills, he would judge it would be eight or ten miles—that would take in the Elwood district and the Dodge district. Elwood is shown on this map, Defendants' Exhibit 259. He has hunted over the mountains a few times up in towards the south branch of the Molalla, on the headwaters of the Clear Creek and Molalla—the north branch of the Molalla. He has been over these lands on the headwaters of Milk Creek, on the very edge. He is not acquainted with the lands in the vicinity of Canyon Creek, except just passing through. He could not tell anything much about those lands. He has passed through there and knows where Canyon Creek is, and Milk Creek. He has hunted on the headwaters of Canyon Creek, in the mountains, but further down he knows nothing about it. He is a little better acquainted a little south and east of Springwater than he is right east. Cazadero is right east of Springwater, that would throw him on the east side of the Clackamas River. He has not hunted or been on that side of the river as much as he has on the southeast side of the river. He is acquainted with those lands marked in green in township 4 south, 5 east, on the north fork of the Clackamas River, which is headed northeast from Springwater up towards Mt. Hood. The North Fork of the Clackamas is on the north side of Springwater, and Milk Creek is south—a little west of south of Springwater. The headwaters of it are almost

due south from Springwater. The land south and east of Springwater, in Township 4, has been burned over about eleven of twelve years ago, and a majority of it, one might say, would be called deadening. It is covered with more or less dead timber and underbrush that has grown up in the deadening, and it is rolling land, lots of spring branches breaking out from the hills, and running into the Clackamas River. A proportion of that land could be farmed all right, and it is good fruit land. That condition does not extend as far east as his knowledge runs. If one would run ten miles southeast of Springwater, he would get into the foot of the mountains, and when they get into the foot of the mountains, of course that is rough and rocky and hilly, and is not good for anything except some pasture land; but as far as eight miles back southeast, there are settlers all through, and that is true generally of all the land within that radius. Most all of the homestead land is taken up there, and as a general thing people are living on the land. There is once in awhile a vacant piece where they have proved up and went off and left it there, he supposes until they would get able to start in and improve it, clean it off; but most of them have a man on them. These settlements extend back about ten miles southeast, clear to the foot of the mountains, up on the foot of the mountains, and up the Clackamas, on the main fork of the Clackamas. He knows a party who owns a good ranch up there thirty miles above Estacada, a man by the name of Davis. He has taken up a piece of land there that has quite a lot of opening on,

and he is farming it, raising hay and garden stuff, and has set out fruit trees. Farm products grow there in that locality. They raise good fruit forty miles southeast of Estacada, on the Clackamas River, in the Hot Springs country. That is getting pretty well up into the foot of the mountains. It is too rough for farming in the mountains unless one would get onto a bottom on some of those rivers. There are benches in the mountains in the vicinity of which he has testified. He does not know that there would be anything to prevent a man from farming there, only those benches are small. A man could not get a very big farm on those benches in the mountains. One will find benches there of ten or fifteen acres which a man could farm. Clackamas County, up in the foothills, is not considered a very good grazing country. They do not have the grass there that they ought to have. Still cattle do fairly well, but it is not considered a good grazing country. It is good for fruit lands, small fruits, and is all right for grain if it is cleared up once, but it takes some muscle to clean it up.

Q. To what extent, if any, Mr. Kandle, has the railroad company's failure to comply with the conditions of this grant and sell the land to actual settlers at $2.50 an acre, and withdrawing the land from sale—what effect has that had upon the settlement of that land in the vicinity that you have testified to?

A. There is land up there that I have seen people looking at that would like to buy it, but they couldn't hardly afford to pay the price that they held the land

at; they didn't think they could go onto a wild piece of land and pay the price that the railroad people wanted for it, and come out—pay for it and make a living for their family. The consequence was they didn't take it.

Q. How long ago was that, Mr. Kandle?

A. Oh, you might say there has been people looking at railroad lands back for the last thirty years.

Q. That land has been off the market for some years, hasn't it, to your knowledge?

A. Yes, the last few years. But years back, you know, it was on the market, and people looking at it, and a good many of them did buy, and some did not.

Whereupon on cross examination witness testified that his father took 320 acres in the section east of Springwater in 1852, a donation land claim, and there are other donation land claims which were taken around in the neighborhood of Springwater that he knows of. That is an old settled part of Clackamas County. There are 260 acres of his father's donation land claim in cultivation now. He owns the east half of it himself. He has 130 acres, and the other 160 acres below has about 130 acres in cultivation. There is a railroad which runs to Cazadero, and he is three and a half miles south of Estacada, and Cazadero is east of him about two miles. They ship their produce to Portland from Estacada. There is no shipping point at Cazadero. That railroad used to be known as the O. W. P. but it has changed

hands and he does not know just what the name of the road is now, but he understands that the Portland, Railway, Light & Power Company has bought it. There is a power plant at Cazadero. It is quite a large plant. Referring to his statements about helping his neighbors herd cattle a few years ago, they would turn out a few head of stock cattle on the range and let them go back up southeast towards the foot of the mountains. These cattle ran clear up on the mountains, and they range all the way from Springwater ten or fifteen miles, and would range over quite a lot of Government land that had been taken up, where the parties had just fenced three or four acres, and the rest was laying outside, and some railroad land, and some school land. These unfenced lands out there used to have quite a lot of timber on them, that is, up close to the foot hills of the mountain, but down off the foot hills there was scattering timber, and more or less underbrush, and a good deal of old rotten logs that were laying down and had been down hundreds of years. There are some saw mills, not any large mills that cut very much timber around that vicinity, and they locate themselves where there was just a small bunch of timber. There was not timber enough for a large mill. The demand for timber lands in his neighborhood became pretty active about ten or twelve years ago. He does not know much about any increased demand because there is very little timber in there. There is not enough to make it an object.

Whereupon on redirect examination witness testified that he bought a small tract from the railroad com-

pany once, containing about 29 acres. He bought the same piece that John Zeek contracted for after he had left it, and he thinks he paid $7.00 an acre for it. This railroad line that he lives on is an electric line running from Portland. It is 33½ miles from Portland to Estacada, and there is an electric line running out to Estacada. This electric line runs clear above Cazadero to the North Fork of the Clackamas; that is, it is graded there and the track laid almost to the North Fork, and it runs from Portland in the neighborhood of forty miles. Springwater is thirty-seven miles by the railroad; that is, thirty-three and a half miles from Portland to Estacada, and three and a half miles south to Springwater, and the lands would be about forty-seven miles from Portland, that is, the outside limit of these lands to the foothills, would be about forty-seven miles from Portland. There is some railroad land laying southeast of him on Clear Creek, and some railroad land lying on the south side. There is an eighty lying on the south of this piece he bought from the railroad people. That land has a little patch of second growth, pretty good saw timber on it. About half of it could be cultivated, and the rest would be a pretty good little bunch of timber, and would make good pasture after it was logged off. He believes that the rest of these tracts that lay below the foothills, off of the side of the mountain, that fifty per cent of them could be put in cultivation and farmed. Of course there are canyons running through that would be too steep, but on the benches and up on the ridges there could be farmed, he believes,

fifty per cent of it. The railroad land down on Clear Creek, of course that lay, quite a lot of it, on the hillsides. There could not be quite so much of that farmed, but it could be worked into pasture land by burning off and sowing with orchard grass and timothy, etc. There is no railroad land adjoining him at the present time. There used to be some land there adjoining him that Mr. Bonney bought right over south of him, a forty, and that forty joined the 29 acres that he bought. Mr. Bonney used to own it. A man by the name of Mr. Miller bought that forty and the 29 acres from him. The title has passed from the railroad company, and Miller has made a good little farm of it. The demand for timber commenced about ten or twelve years ago. People paid no attention to timber in that section up to about ten or twelve years ago, and then they commenced to want to get hold of a piece of timber land. The people who settled on the even sections burned the timber up in every possible way they could, to get rid of it. That community where he lives was generally a timbered section, had scattering timber over it. They had no prairie land in that county at all. They had timber scattered all over their farms. There has been an increased demand for agricultural lands the last ten or twelve years, and the price of agricultural land during this period has increased materially. There is a good demand for lands for settlement purposes, but there is not very much land for them to get hold of any more.

Whereupon on recross examination witness testified that free from buildings, his land is worth $100 an acre.

The average value of the unimproved land out there, taking it as it runs, say for four or five miles east of Springwater, and four or five miles south of Springwater, eliminating the improvements, will run from $15 to $35 an acre. He is seventeen miles southeast, almost east, a little south of east, from Oregon City.

Whereupon A. W. RIGGS, called as a witness on behalf of complainant, being duly sworn, testified that he is sixty-three years old, and lives 2.9 miles from Canby, which is situated in Clackamas County, Oregon, and has lived in Clackamas County sixty-three years, except about seven months at Hood River and a few years in Portland when he was a child; his father settled on 640 acres within a mile of the river at East Portland in 1847 or 1848, or somewhere around there. He dug three wells to get water, and had to pack water from the Willamette River for a mile, and so left the place. He has been farming most all of his life, in the neighborhood of Canby, and he is pretty well acquainted with the farming conditions of Clackamas County, Oregon, and the products and stock that they raise, and the ability of the land to produce. He notices Canby on Defendants' Exhibit 259, and he could hardly tell the unsold lands of the company marked in green on this map, Defendants' Exhibit 259, but he has 160 acres in section 12, township 7 south, range 2 east, on Cold Creek, which is not used very much for the reason that there is not very much of a settlement in there; but they use it for grazing purposes and strawberries and all kinds of fruit. He bought 160 acres of a homestead for $2.50

an acre, six years ago last January, and then sold it the other day for $10.00 an acre. That land was burned land, he calls it. He thinks they said the fire ran through there in 1849, and the timber is getting pretty well rotted. There has been no timber on that part of the land that is worth very much. There is some piling on it—there is timber there a foot and a half or two feet through, now, but not on very much of it, just in places. Of the 160 acres he bought, he thinks there could be about seventy-five per cent of it rendered suitable to cultivation, and most of it around there could be rendered suitable for cultivation. One might drop over to the Molalla Canyon, and there is a whole lot of that, that is not worth anything excepting for pasture, it is too steep. As to saying that he is acquainted with the railroad land, he could not say, because he does not know what sections are railroad land, but he has been all over the mountains in that vicinity, hunting elk and deer, and he is acquainted for several miles around there, some four or five miles, pretty well, and he would judge at least one-half of it is taken, the even sections, homesteaded. A man right south of him had a homestead of eighty acres; that is all he could get in one body, and there was another eighty acres he thought he could get after he homesteaded this. They told him he could take two eighties, or hold one at a time, but he said another man jumped the other eighty acres. He homesteaded that, and has proved up on it, and the most that he raised of any value was strawberries. Last year on about half an acre he had sixty crates of straw-

berries, and sold them at $1.50 a crate, at Soda Springs, seven miles, and he said they turned right around and sold them to a man who came from Portland in an automobile for $3.00 a crate. This land produces other products than strawberries. There are settlers living in this community; a few settlers around there, and the reason there are not more is because they cannot get the railroad land, and there is no school. This man east of him had to move out to school his children, and he was afraid he would lose his homestead. He had five children there and it is four miles to any school. They raise on these homesteads, in this settlement, mostly hay, for the reason that they have mostly stock. There is no threshing machine comes in there to thresh what little they raise. They raise hay and such as they can feed to their stock. He knows of railroad land there; he knows of one forty acres that could all be cleared, it is easily cleared—quite a lot of open land already to plow on it. This homesteader plowed part of it and raised hay for his stock. There is but little land cleared on the farm there that witness owned, in township 7 south, range 2 east. He bought it on account of his stock. His grandson went up there one summer and cleared an acre and a quarter of land without a stump on it—flat land, as good land as one ever saw; nice flat land, bottom land. It was a homestead, but there was not more than an acre cleared when it was proved up on. They had fenced it with wire in order to keep stock there. The title passed from the government to that land during Cleveland's administration. He would think on an

average, generally speaking, that seventy-five per cent of the land in that vicinity, if it was cleared up, could be cultivated, but it is just like other land, it is hard clearing. There is a burn there, just this side of the burn is green timber, and he is just in the edge of the burn. There is 640 acres of railroad land just this side of his place. Six years ago there was a time when people commenced thinking they were going to get the land and they all squatted and put notices on it. That land is still timbered. There are open places where they could put in garden or a little stuff, but it is timber land. It would not pay a man to go on that timbered land and make a home on that land in that township. It would not pay him because he could not live there. There is too much timber, and to cut that timber and waste it, would not pay him. He thinks this is in section 1, township 6 south, range 2 east. The land there is good—the land is number one, and could be cultivated if it was cleared. He thinks very nearly every bit of it could be cultivated. That timber land has no grazing on it—it is in the green timber. All the grazing part is out in the burn; then there is so much fern grows that there is not a great deal of that. That is what he said about grass. This mesquite grass has to be sowed. On the place he bought there is quite a lot of grass in through there, where they had stock. It would be good for sheep, but there is a heap of it just fern and logs. There is fern up there that grows away up high, measuring nine feet long, which prevents the grass from growing. The cow has to wade right around and knock

that fern around to eat the grass. There is lots of grass among it in places. The soil, most of it, is good. The only thing against that country is, it is up and down hill, and the stone on those steep places, it is, rocky. In that timber, there is good soil. It is not any harder to clear than some other land was. It is not any harder to clear than right here, he thinks; his father was here, —meaning East Portland,—when this was all timbered. He tried to purchase a piece of this railroad land down near his home, forty acres, but did not get it. The railroad company said it was not for sale, and they would not give him an option on it. They wanted him to write to them and advise them as to the quality of the land, and he did that when he wrote to them. It is forty acres of land on the Molalla River, between Molalla and Mill Creek, and has small timber on it. It has been skinned of the timber by settlers. One would cut in on it a little ways and another one on the other side, until there is not much left only second growth timber, but still it has good second growth timber, such as piling, and cedar for telephone poles, and cotton wood. He never took up a homestead. He filed on thirty acres once, sold the improvements to another fellow and threw it up. That was all the land there was in the bunch, thirty acres. That was in the settlement there where he lived.

Whereupon on cross- examination witness testified that the 160 acres that he owns out there is in section 12, township 7 south, range 2 east. He does not remember exactly how long ago that place was home-

steaded, but it was proved up in Cleveland's administration, about thirteen years ago. He supposes the man lived on it five years. It was a homestead. He supposes that a good part of the 480 acres in section 6, township 7 south, range 3 east, and 80 acres in section 32, township 6 south, range 3 east, and 40 acres in section 8, township 7 south, range 3 east, a good part of that was government land at that time. He thinks the southeast, or the northeast quarter of that was taken before his was, by a man by the name of Bonney. There is no government land there that is of any account now; it is no account because it is too steep. Section 6, township 7 south, range 3 east, 480 acres, is on the streams where it is too steep. His land sets in between two streams, and is comparatively more level there than where the land breaks over on to the Molalla and Butte Creek. Where it breaks over on the side it is too steep for a man to plow. He could not farm it, but could use it for grazing land, that is all. If this government land is there now, it is not worth taking; people could not take it and make a living on it. These people that five or six or seven years ago tried to get on to a railroad section there, three or four of them going out there —did not build cabins, they just put up notices, except one fellow built a cabin and lived there for a year and then moved off. They thought maybe they could homestead the land if the railroad company lost it; that is, if the railroad company lost the land, they thought they would get in there and settle on it. One fellow was on a piece of that section at that time that was pretty nearly

all timber, but there is some open land on it; three or four acres of open land in spots, it is flat open land; one could plow it. The section is pretty well timbered —saw timber. He does not know the price of timber there. His father-in-law owned a piece right adjoining that land, but he never would tell him what he got for it. He does not know what the stumpage is worth, or what they pay a thousand for good saw timber. He is not acquainted with the timber business and never dealt in it. That was pretty good timber there. The quarters that did not have any timber on were pretty well picked out—that was the trouble. They selected this section, where three or four people put up notices on it, about the time this controversy commenced as to whether the railroad could hold the land.

Whereupon on redirect examination witness testified that this section of land that he mentioned as having notices posted on it, was section 1, township 6 south, range 2 east, but he does not know anything about the stand of timber on it. He never cruised any and never knew anything about that business. His father-in-law homesteaded a piece right adjoining him that is as timbered as it is. There are some settlers living in there, in township 7 south, range 2 east. That 640 acres was pretty well covered with timber, but from his place out the other way, where the settlers are, it is all burned country, no timber of any account. His place has the best second growth timber that there is in there. There is quite a lot of piling on the creek bottom, but most of it is barren land—nothing but willow brush and fern. The

burns do not destroy the soil. Burned land is good land, if one gets in and cultivates it.

Whereupon on re-cross examination witness testified that he does not know when the burn was, but the people tell him that it was in 1849, but he has timber there that is from six inches up to two feet through. These trees that are two feet through are very tall. They may be one hundred feet or more than one hundred feet. He thinks they have all grown since the fire. He would say that he had on his place probably thirty-five or forty acres of fir timber. He knows that this fir timber does come up, and inside of sixty years makes saw timber.

Whereupon on re-direct examination witness testied that his knowledge as to the growth of the fir timber is limited to this section of the country where he has lived. Large saw fir timber generally used for logging purposes, does not grow in any such length of time as that, but this second growth will make saw timber, that is what he means. Now, there at his home, he knows that when that brush was only so high, he could drive over it with a wagon, and now they have made saw timber out of it. They had a little mill in there and sawed up a lot of this timber and made lumber out of it, and made fencing and rough lumber. Some of those trees were about two feet in diameter. He knows that to be the case because he saw wagons drive over them. He does not know how much the general conditions as to the natural formations and possibilities of agriculture, and the timber conditions, since 1870, have changed. He does not know that they have changed; he could not

say that they had. Timber growth always, since he has been there, is just the same. Whenever one makes a burn and leaves it, it is soon growing up into fir brush. The general conditions in that country have been the same since 1866. He remembers well when his older brother slashed a piece of land, and now witness can show one tree two feet through on it. That has always been timbered country during that period. It seems as though that burned country does not set to fir like it has down in the valley; he thinks it has been burned off so many times. That timber of his up there, is on a creek bottom, and the rest of the land up there has no fir on it to amount to anything. The fir timber grows in the valley where he lives that he knows of, but this up in the mountains is on a creek bottom, where it is rich beaverdam—would be called beaverdam land; it is real black land.

Whereupon on re-cross examination witness testified that he thinks that this burned area up there has been burned over a good many times, and that probably kept the timber from growing up.

Whereupon W. R. LAMB, called as a witness on behalf of complainant being duly sworn testified that he is forty-seven years old, resides near Medford, Jackson County, Oregon, and has lived in that County about thirteen years, and has been farming most of that time in the Big Butte Country and on the North Fork of Little Butte and near Medford and owned lands there. He first lived and farmed in the Big Butte country.

His land was in section 26, township 34 south, range 3 east, where he had two hundred acres. He took up a homestead in Jackson County, he thinks in section 26, township 34 south, range 3 east. He lived a little while at Talent before he went up there to the Big Butte place; he took his homestead when he went up into the Big Butte country right away, it was 160 acres. He had a timber forty beyond there about a mile which he filed on under the timber and stone act. He lived on his homestead there about four years. The character of this land that he farmed there was reddish like loam; it was partly timber, partly open country, mostly timber. He cultivated about 25 acres, as near as he could tell, not all on the homestead, right close to it though. Part of the land required clearing and part of it did not before it could be plowed or cultivated, but not all on his own land. He had a family and earned a living there and supported himself and family on that land. He left that country on account of school for his children. When he first went there, there was no school and they organized a district and built a school house which burned down. They built another and it burned down. There is railroad land all through that country, the odd sections. There was difficulty in getting a sufficient number of children to organize and maintain a school in that vicinity at first, but they had enough children by going a good long distance for school. The reason he left his homestead was in order to get better facilities for his children than there were in that vicinity. The school house burned down and he had no way of

educating his children. He should have said two school houses burned down. He sold the land and does not know if it is still farmed as he has not been there since he left it five years ago. There were settlements in there, people living in that community when he left. He farmed on Little Butte Creek, on the North Fork of Little Butte. He farmed near Medford, in Jackson County and a little near Talent before he went up into the Big Butte country, all in Jackson County. His experience is sufficient to acquaint him with the possibilities of farming and the farming business in Jackson County in the vicinities where he has been acquainted. Farming has been his business practically ever since he resided in Jackson County. He worked a short time in the sawmill but very little. His homestead was in section 26, township 34, 3 east, and referring to "Defendants' Exhibit 259" he does not know that he could tell just how much of the land in the vicinity of section 26, township 34, range 3 east he has been over, but he has been over an area, he thinks, of ten miles, from there to Butte Falls and perhaps five miles south and east of the land he is speaking of; that is east of this township 34, 3 east. He could not tell exactly the boundary lines, how far he was, referring to township 34 south, range 3 east. He is fairly well acquainted with that country in through there, four or five miles either way from where he lived on his homestead and ten miles to Butte Falls. Butte Falls was south and west of there. He is fairly well acquainted with township 36 south, 2 east. Lake Creek runs through that township and Little Butte

Creek according to this map, "Defendants' Exhibit 259." He has been all up and down the North Fork of Little Butte Creek. Lake Creek is on the forks between the North and South Fork of Little Butte Creek and he is acquainted with the land on the North Fork of Lake Creek and has been back to Soda Springs and is fairly well acquainted with the lands in the vicinity of Soda Springs, but has not been in there as much as he has around Lake Creek. The County road goes right to Soda Springs. He has been off the road along towards Soda Springs and has hunted through that country and has run stock through there some, not very much, not as high as the Soda Springs but he has around Lake Creek. He had a farm in the vicinity of section 34, township 36 south, range 3 east, which was two miles up the creek from Lake Creek, up the North Fork of Little Butte. Lake Creek is the postoffice. Forty acres of the land was railroad and forty was school land. He does not know what the source of title of the balance of the land was. The farm contained 300 acres. He has a farm near Medford, about a mile and three-quarters from the depot of the Southern Pacific Company at Medford. He thought that land had been taken up some years ago, it is an alfalfa ranch that he is living on at present close to Rogue River. He is not much acquainted west of Eagle Point, but east of there he has been through that country. The map shows Eagle Point in township 30 south, range 1 west, and shows tracts of railroad land in that township, comparatively small tracts. He has been around Brownsboro and is fairly

well acquainted in that vicinity. He would not know railroad land from any other there as he had never had it mapped out to him. He has been around by Central Point, near Jacksonville, close to Medford, north of Medford. He is fairly well acquainted about Jacksonville, which is the county seat of Jackson County, about five miles west of Medford, something like that. He has been to Ashland and about seven miles south of Ashland on the railroad, as well as on the wagon road, only years ago on the railroad and he has been on the wagon road from Ashland. He is acquainted with the lands in the vicinity of Butte Falls and he has been up Willow Creek east of Butte Falls. He has not been over the lands in that vicinity away from the bed of the creek, but has just been up the road and it was sufficient to give him a knowledge of the lands in that vicinity. As far as he could say there is a great deal of timber in through there, in the area he has described around his homestead, there are open glades and there is a large amount of railroad land in that vicinity. He believes about half of the country is railroad lands. In their raw state, the way these lands are at present they are good grazing land.

Whereupon witness testified:

Q. What percentage of those lands do you think, in your opinion, would be suitable for settlement purposes, that a man could go on there and take up 160 acres of land for the purpose of making a home there?

A. You mean just taking the country over; how much per cent of the quarters—quarter sections?

Q. How much per cent of the 160-acre tracts, regardless of whether they were quarter sections. They might be in a T-shape or L-shape, 40-acre legal subdivisions of land contiguous, lying contiguous, 160 acres.

A. I would think about 75 per cent.

Q. How much farm land would you think on an average a man could get from the lands?

A. Well, I would think about 60 per cent of it could be farmed after it was cleared.

Q. Now, in this other territory out from Lake Creek that you are acquainted with—

Mr. Fenton: That is on Little Butte.

Q. Little Butte Creek, on the north fork there, out from Lake Creek, the Soda Springs country?

A. That is grazing land a great deal of it through that country.

Q. Well, what per centage of it do you think would be suitable for settlement purposes, that is, for a man to take 160 acres for the purpose of making a home there and farming it?

A. I would think about the same as it was on the other creek, about 75 per cent.

Q. How about the average of tillable land?

A. It won't run as high a per cent, I don't think, through there; that is, it is hilly more—it wasn't quite as level as it was up in the Big Butte country. A man could farm it, but it wasn't as easy farmed as it was in the Big

Butte country.

Q. How does that land compare as to having any timber on it with the other country that you are acquainted with?

A. That hasn't got near as much timber as it has in Big Butte. The timber is scattering.

Q. Now, are there lands of similar character, that is, that have been timbered lands there, are any of those lands being farmed in these viciniites?

A. They are.

Whereupon witness testified that they raised in these vicinities wheat, corn, well he would say all kinds of small grains that he has ever seen grow, stock, hogs, cattle, horses, all kinds of poultry, and there are settlers living in that community who have gone into the timbered country and made farms on lands similarly situated.

Whereupon witness testified:

Q. Mr. Lamb, in your opinion, what has been the effect, if any, of the railroad company's failure to comply with the conditions in their grant in failing to sell the land in tracts of 160 acres to actual settlers for $2.50 an acre and in selling in large tracts to big companies, and in withdrawing these lands from sale?

A. Will I answer it?

Q. Just go ahead and answer it.

A. It has hurt schooling, hurt the population of the

country.

Q. By hurting the population of the country, do you mean—

A. Kept settlers out of there.

Whereupon witness testified that he applied about five years ago to purchase land from the Oregon and California Railroad Company, being the southwest quarter of section 27, township 34 south, range 3 east. There was a great deal of timber on most of it, some open glades in it, free soil, reddish colored loam, and was well situated for agricultural purposes. There was good grazing land on it. He had farmed land adjoining this and had raised two tons of wheat hay to the acre adjoining this land of the same general character. The lands that are not adapted to tillage and could not be plowed would raise good grass and could be used for pasture land.

Whereupon on cross-examination witness testified that he took his homestead April 27, 1903, lived on it four years, commuted and paid up at $1.25 an acre. It was in section 26, township 34 south, range 3 east, and was not on a creek but close to Camp Creek, a branch of the North Fork of Big Butte. It was about ten miles by wagon road from his place to Butte Falls. There were about five acres in cultivation on his homestead when he left. His five acres was bench land. It was not on running water. His improvements were not on this five acres, but right by it. His improvements consisted of house, barn, fence, wood shed, smoke house;

his house was 16x24 with a kitchen 14x16. The kitchen was a box, and the balance of it which he made would be called frame. He cut the poles, used studding, split out pieces for the sheeting and used what they call shakes or clapboards in that country. The shakes were made out of sugar pine. The main part of the kitchen was made out of sawed stuff and the rest was hewed out. The kitchen was boxed and had studding and the house was ceiled with lumber on the inside, the main house. He floored the house with lumber. He built his barn out of hewed pieces and sided it up and covered it over with shakes. It was all made by himself or hired men on the ground. The five acres was originally partly open. It was a deadening and he could not tell how much timber he cut off of it. He cut the snags as they called them, or dead trees down and rolled them up and burned them. This five acres was a deadening and it was practically clear. It had been burned over timber land. The old snags and logs and things of that kind were left from the fire and were still there. He lived on that place four years. His family consisted of himself, wife and four children.. He did not have any hired man during that time, and did all this work of clearing this five acres himself. He left the stumps and burned around them. He sowed wheat on this five acres. He could not tell how much wheat he raised in any one year on his five acres, he mowed it for hay and did not thresh any of it. There were no threshers in that country. It is fairly well up in the mountains but he could not tell the elevation, but it is a good deal higher than Medford, but he could not say

how much higher. He could not say whether it was in the frost or below the frost line. He planted some young apple trees there but they were not old enough to bear when he left that country. He planted potatoes for his own use and had no frost early in the fall. He did not raise anything on the place to sell. He worked outside some, carpentered some and worked for some of his neighbors. The twenty acres that he farmed was about a mile away, something like that, he rented that. He thinks that twenty acres was on a homestead and was on a creek called Freeze Creek, a little branch, there was water in it in the winter time but none in the summer. This farm of twenty acres had been cleared out of the timber, and he does not know how long it had been cleared, but he farmed it. This twenty-acre tract was not on the stage road, there was a building on the land. He rented this place from Fred Rapp, who he thought had owned it for about seven or eight years. He paid one-third of the wheat hay, which yielded about two tons to the acre, as rent. He had some horses and four head of cattle. The cattle roamed out over the country around there. He ran his own cattle, turned them loose at the homestead and let them go, but they would not go far. He also had some calves. He received $22.50 an acre for his homestead from the purchaser, Woodbury of Kalamazoo, Michigan, whom he supposed were timber people. There was scattering timber through his homestead, except the five acres he cultivated. He does not know what the purchasers bought his homestead for. He never made any cruise or estimate of the timber on his home-

stead. He did not think that he had a good timber quarter section of land. He does not know what a merchantable timber quarter section of land would be. The forty acres that he took under the timber and stone act was not adjacent to the homestead but was about half a mile from the nearest corner of it. This last mentioned tract was timber land and he sold it to Woodbury. Woodbury resides in Kalamazoo, Mich. He sold this land four years ago last March. He commuted on the homestead about 1906 or 1907, he does not remember. He had no thought of selling the homestead to Woodbury, before he made his proof upon it. This sale was attended to for Woodbury by B. H. Harris, who paid for the land through the Medford National Bank. Harris was a sawmill man up on the Big Butte, but he does not remember the name of the company. He had heard that Harris was operating for W. S. Dewing, Kalamazoo, Mich., and had heard that Dewing has a lot of timber lands on the Big Butte. He had never seen Woodbury, who bought his homestead. He has not been to the homestead since he sold it and does not know whether anybody lives on it now. There was fir and a little sugar pine on the homestead. Most of this timber is saw timber. The two school houses that burned down were built by tax. He does not know how the railroad lands were taxed. They levied a certain amount of tax, so many mills tax and built the school houses and he supposes whatever land was in the district had to pay a proportion of the taxes. The last school house burned down the fall before he sold his homestead in March or February. He farmed on

the Little Butte, owned 320 acres there which he purchased from a man by the name of Peck. Part of this land was a homestead, forty acres railroad land, forty acres school land and he does not know what was the origin of the title of the remainder. He paid $3,000 for this land and owned it over two years and sold it for $5,000 to Mr. Farrar who is in Portland at present, but he does not know where he makes his headquarters. He did not know where Farrar lived when he purchased this land, but does not think that he was a timber man, or dealing in timber, and did not know whether Farrar lived on the place. In this 320-acre tract there are 60 acres in cultivation and part has not very good timber on it and would hardly be called timber land. Some of it was desert land which was good for pasture.

Whereupon witness testified:

Q. What kind of soil is it?

A. Part of it was what we call sticky soil, part free soil.

Q. And rocky?

A. Part of it was rocky.

Q. Hardpan that you can't get through without pretty nearly blasting?

A. Some of it was; some of it was not.

Q. A good deal like the desert out there north towards Eagle Creek from Medford, that they are trying to break up now with these plows that go below the hardpan?

A. Yes, and they are making good ranches of them.

Q. A Spokane concern is trying to put water on it, and put out a few trees, and sell it to suckers?

A. They are making a good living on it. If you had attended the Jackson County Fair this year you would have seen good products grown on it.

Q. What made you sell this 320 acres of land?

A. Well, I don't know, the same as anybody else would take a notion to sell anything.

Q. Now, you say that in your judgment sixty per cent of these railroad quarters, in the vicinity of your homestead and in the vicinity of this farm on Little Butte where you are acquainted, could be farmed after it was cleared?

A. Yes.

Q. Well now, it would have to be cleared of the timber before it could be farmed, wouldn't it?

A. And brush.

Q. Well, I mean the timber that is on it would have to be cleared, too, wouldn't it?

A. Well, a man could farm around the stumps if he wished, raise grass.

Q. I know, but wouldn't he have to cut the trees down and cut the timber and logs?

A. On North Fork it ain't very heavily timbered.

Q. But just answer my question without arguing.

You would have to cut the timber down, wouldn't you, before it could be used for farm purposes?

A. Part of it could and part of it couldn't. Part of it is already clear.

Q. How do you mean clear?

A. I mean nothing on it—glades open, what we call open glades in that country.

Q. How large an open glade is there on any one of these quarter sections?

A. Section 15, township 36, 2 east, there must have been five or six acres adjoining the forty that I owned clear.

Q. That has an open glade on it?

A. Clear, clean, no brush on it.

Q. What kind of stuff is there on it—anything at all?

A. Grass.

Q. What kind of grass?

A. Wild grass.

Q. What kind of soil?

A. Sticky.

Q. Any rock?

A. A few.

Q. Is it steep or level?

A. Neither one. It is just a gradual slope.

Q. Now, how many settlers, Mr. Lamb, can you name that lived within a mile of your homestead, that lived on the same character of land, and did not live on the creek bottoms and on land that had been settled years ago? In other words, how many settlers within a mile of your place clear around can you name that lived there when you were there?

A. Mr. Aldrich. Very few, because the railroad took a mile out of each corner, and we couldn't get settlers very close to us.

Q. Now, these people that lived there, did they take homesteads?

A. Mr. Aldrich did.

Q. When did he take his homestead?

A. The same time I did, I believe.

Q. Has he sold his place?

A. No.

Q. Is his timber land?

A. Partly.

Q. Now, name someone else within a mile on either side clear around. Take a two-mile circle. I mean a circle, and leave your place out—

A. Two mile?

Q. Yes, two miles, a mile on each side.

Mr. Rabb: It is a mile on each side. The radius is a mile. A mile from your place.

A. Mr. Byden.

Whereupon witness testified that Byden relinquished his homestead but not to a timber company. He thinks he relinquished it to some party in Medford, but does not remember the name and does not know what became of it, or how much was received for it. The land that he applied to purchase from the Railroad Company, the southwest quarter of section 27, township 34, 3 east, was about half a mile northwest from his homestead and part of it had timber on it. He made application to the Railroad Company to purchase this land. He and one of his neighbors wrote to the Railroad Company and he does not just remember where they wrote to. He had his application recorded in Jackson County. He offered $2.50 per acre to the railroad for this land, and it was as good a quarter section as the homestead that he sold.

Whereupon witness testified:

Q. If you had got that for $2.50 an acre you would have got it for $400, and then you could have sold it for $3600, couldn't you?

A. I suppose I could have if I had wished to have sold it.

Q. You looked around, did you, to find a good quarter before you made your application?

A. Yes, a good average quarter.

Q. Yes, you wanted to find a good piece of timber land, didn't you?

A. Well, I wanted to get a piece of land to run stock on.

Q. And you would take the timber if they would throw it in, wouldn't you?

A. Oh yes.

Q. And you wanted to run stock on it while this timber stood? Wasn't that the idea?

A. Well, I might slash some of it off.

Q. Yes, a little, enough to build a cabin.

A. I don't know what I would have done with it until after I had got it.

Q. You didn't move on it, did you?

A. No.

Q. You didn't make a cabin like some of these Lafferty clients in this record?

A. No. I didn't think there was any use when they wouldn't sell it to me.

Q. Although you went to the trouble to have them file your application and make your contest in the records of Jackson County?

A. Yes, sir.

Q. You were advised to do that?

A. I was told the railroad company had agreed to sell it to settlers for $2.50 an acre, that I might settle on it.

Q. You didn't want to settle? You wanted to run your cattle over it?

A. Wasn't that settling on it?

Q. Is that the way you wanted to settle on it?

A. I would have moved on it if they had let me have it.

Q. The timber would have paid you to move on it for a while, wouldn't it?

A. The timber would have paid me to move on it for a while?

Q. I say, honor bright, wouldn't it have paid you to move on it for six months to get the timber?

A. Yes, it would have paid me to move on and hold it for five years.

Q. To get the timber, that is the fact, isn't it?

A. Ask that question again, won't you?

(Question read.)

A. Not only to get the timber. I would have liked to have the land.

Q. You would have liked to get the timber too?

A. Yes, I would have taken the timber along with the land.

Q. As a matter of fact the real reason you applied for that quarter section over a quarter section that didn't have any timber on it was because there was timber on it

—now, isn't that the real fact about it?

A. It would have been hard to take a quarter in that section that didn't have any timber on it.

Q. I know, but you were not looking for a quarter section that didn't have any timber on it, were you?

A. I couldn't have found it in that country.

Q. I know, but knowing that—you knew it was all pretty good timber, didn't you?

A. It was not all timber. I testified there were some open glades on it.

Q. I understand, but the quarter section that you applied for, and offered $2.50 an acre for was a pretty good quarter section of timber as that timber runs in there?

A. Yes.

Q. And you picked that out because it had pretty good timber on it, didn't you?

A. Well, I don't know that I picked it out any more than I would a good many other quarters. It wasn't any better than some other quarters.

Q. I understand, but you picked that quarter section out because it had good timber on it, now, didn't you?

A. Well, it had good land, too, on it.

Q. I understand, but answer my question. Didn't you pick that quarter section out because it had good timber on it—yes or no?

A. Yes.

Q. That is all.

A. Partly, I might answer.

Whereupon on re-direct examination witness testified that during his residence in Jackson County he had been engaged mostly as a farmer but never engaged in the timber business. At the time he took his homestead he had no land, no home, and wanted a home. He purchased the other farms mentioned for the purpose of making a living off of them by farming and raising stock. The sticky land referred to by him is black land and is a productive soil.

Whereupon upon re-cross examination witness testified:

Q. Will a plow scour in this sticky land?

A. Not good.

Q. Don't you know you cannot drive two hundred feet with a plow in the ground in that sticky land until it chokes up and you cannot get any further?

A. No, I don't.

Q. Fills the mold board so it is clear and smooth and you cannot keep it in the ground?

A. Oh yes, you can.

Q. Do you tell me that that sticky land, that the plow will scour in it at all?

A. Not scour good.

Q. It won't scour at all, will it, unless it is wet—half water?

A. In the fall of the year, when the first rains take place it is as good as any land we have got.

Q. Do you know that land over about Jacksonville belonging to the Hanley estate that you cannot get a plow to stay in the ground unless it is wet as water?

A. Yes, you can.

Q. That is sticky land, isn't it?

A. I am not acquainted very well with the Hanley ranch.

Q. How many acres of that sticky land have you tried to plow?

A. I don't know as I could just tell you that.

Q. You have never had very much experience if you think a plow will scour in it.

A. Yes, I have. I say it won't scour good in it—I don't argue that at all.

Whereupon on re-direct examination witness testified that the Rogue River Valley is on sticky land. This soil produces grains, fruits and vegetables and is used for general farming purposes in that county. The land in the vicinity of his homestead that was in cultivation and that which he cultivated was good farming land. Nearly all of the lands that were cultivated in that section of the country contained more or less timber. He was up in that country five years ago and people were living up

there, farming timbered land which was cleared and slashed, part of it and part of it was open glades. Nothing would prevent the farming of this land except the timber that grows on it, except where there were patches that were rocky, but the bulk of it was very easily cleared of rock after the timber was off. This would be a good farming country after the timber is removed. It will take some work to clear the timber of course.

Whereupon CHARLES RANDLES, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-five years old, resides at Lake Creek, Jackson County, Oregon, and has lived in Jackson County since 1881. He was born in Redding, California. For the last twenty years he has been engaged in riding after stock. He ran a farm, along with stock raising, which was located on the south fork of Little Butte in Jackson County, Oregon. Lake Creek is a post-office and there is a stream there that is called Lake Creek. The post-office is right at the mouth of this creek and he should judge that that ranch is about twenty-five miles from Medford. When he came to Jackson County in 1881, he came with his father. He was at that time fifteen years old. He moved from California to Jackson County with his father and mother. His father and mother lived in that Little Butte country—Lake Creek country as it is called. They settled there and his father took a homestead on the south fork of Little Butte creek, about fourteen miles south of Butte Falls. His father and mother lived there until twelve years ago. They proved up and got a patent to the land. He was

not at home much after he was seventeen years old. He rode after stock, worked over in Harney Valley, and some west of the Cascade mountains.

This homestead of his father lay part of it on the creek, part of it was hill land, and some scattering timber on it, principally pine, some fir. Some of it was good sized timber and some small. It was scattering hill timber. Verp little of it was saw timber. His father cleared and grubbed the land out of the creek bottoms, cleaned them up, put them in garden stuff, alfalfa, and so on, and they cleaned up about seventy-five acres of brush and timber land. They lived there from 1881 up to twelve years ago, which would be about nineteen years.

His father went from Jackson county to Yreka, California, and stayed a while, and at the present time he is in Medford.

The land that his father cleared was cultivated and put into alfalfa, a good part of it, a portion of it raised potatoes, onions, beans, corn, oats, wheat, barley, all kinds of grain. That land is something about 1860 to 1865 feet in elevation, about the same as Ashland. Part of the land is sticky land, and the creek bottoms was land that had been made from time to time, sandy loam, and is good, productive soil. His father had about forty or forty-five acres in alfalfa there. He raised small grains on most of the balance of the land. There was some waste land on it, pasture land. The waste land was used for pasture. He had one hundred and sixty

acres, and then witness bought one hundred and sixty acres adjoining from a man by the name of Davis, which was all hill land. They then had three hundred and twenty acres of land there. He farmed a portion and pastured a portion of this land that he bought from Davis. It was in township 36 or 37, range 2 east. The nearest post-office was Lake Creek, about four miles east. He doesn't remember the number of the section, but it was in the southern part of the township, near the central portion. Most of the riding after stock that he did was in that vicinity, in the Butte Creek country on the head of Dead Indian. He became familiar with the country there in riding after stock that way. He had ridden all through that country. He was riding most of the time and had been over the lands quite a good deal and observed the extent to which the land is settled there, and has observed the use to which the land has been put there for the purpose of growing agricultural and horticultural crops to quite an extent. It is hard for him to get at the size of the country that he has been over, but he has been through the head of Dead Indian country, which is as far south as he is acquainted with the country, being about twelve or fourteen miles from Lake Creek, and he has been about twelve or fourteen miles north from Lake Creek as far as Butte Falls. He has been through the Butte Falls country, but he is not very much acquainted on Butte Falls but in the vicinity of Butte Falls. He has not been very much along the Rogue River. He is not much acquainted with the Rogue River country. He has been east of Mt. Pitt from Lake

Creek straight to Mt. Pitt, about twenty miles; he has been all through that country west from Lake Creek to Medford, which will be about twenty-five miles west. He has ridden after stock in there something like twenty years, and also in eastern Oregon. He has been at the business about twenty-five years, and he thinks he has put in about twenty of it in this section (referring to the places mentioned in Jackson county). He does not know in a general way where the railroad lands are situated in that territory. He never paid any attention to railroad sections or government sections. He knows as a whole, as a general thing how the country looks and the lay of it. The principal part of the territory with which he is acquainted in that territory compares very well with the land homesteaded by his father, and that he bought adjoining his father's homestead. There are settlers up Lake Creek about fifteen miles, from Lake Creek post-office. Some of these settlers are engaged in stock raising, some in farming, raising vegetables, etc. That is a pretty fair alfalfa country in there. On the south fork of Little Butte, most all of these settlers have their bottom lands in alfalfa. On the north fork, they raise mostly meadow, and on the hill lands they raise grain, hay, corn, wheat, oats, and all such as that. Take the land in general from Lake Creek for eight or nine miles east, and it is all good corn country, and wherever one can get the timber off and the land cultivated, one can raise good corn. That condition extends south clear through to Ashland, and all of that country and north in and about Butte Falls, which is as far as he knows

much about the country, that condition exists as far as he knows the country there. That country is a broken country. One comes to creeks; there will be canyons along there, and the side hills, and benches; there will be quite a draw which they farm, and then one would come on up to this level country and timber. Most of that level, flat country has good timber scattered over it, some heavy, some not so heavy. All of that land practically could be farmed if the timber were off. The land where the heaviest timber grows is about the same character as the other land. There is not much difference in the formation of the land in that section of the country.

Q. Now, speaking generally with reference to this large area that you have become familiar with, I will ask you whether that land is of such character and is so situated generally that it will support a settler, if it is properly cleared and properly handled?

A. Yes, I think most of those quarter sections they could get enough on them of land to support a family if they were properly farmed and cleared up—cleaned up and worked.

Q. Did your father support his family on that homestead of his?

A. He did. He supported about ten children on it.

Q. So that land will grow children as well as alfalfa, will it?

A. Yes, sir, it seemed to.

Q. Now, just in your own language state a little more definitely about how many of those quarter sections in that area that you are acquainted with would support a family if properly handled, Mr. Randles?

A. Well now, as to that you take the country as a whole, I will say, you know, of that, what I speak of as that base timbered land, I think that there could be about forty per cent of that would be agricultural land—just take it as a whole.

Q. Well now, what percentage of agricultural land does a settler need in the 160 acres in order to maintain himself, using the balance of the land for pasturage when it is good pasture land?

A. Well, if a man can get 25 acres of good land he will support a family on it.

Q. This tillable land, does it lie in large tracts, or is it distributed through the country there?

A. Well, it is distributed, pretty evenly distributed.

Q. Are there very many quarter sections there that could not be cleared and cultivated and maintain a family?

A. Not many.

Q. How many quarter sections out of one hundred, in your judgment, in that general territory that you have described, would support a family, if cleared and handled in the proper manner, take it on an average through that whole country as you know it?

A. Well, it would reach eighty per cent of them.

Q. Did your father clear his lands of the timber or was it already cleared when he went there?

A. There was a good deal of timber on it.

Q. How did you clear it?

A. Not so much timber as brush land, a good deal of brush land on the place my father had, and some large—quite large timber, cottonwood and all such timber as that, hazelbrush, salal brush, hawthorne and all such as that.

Q. How did you clear it?

A. Grubbed it out with a grubbing hoe the biggest part of it.

Q. Now, in testifying that that land would support a family, or settler's family, if properly handled, do you take into consideration the difficulties of clearing the land?

A. Yes, sir.

Q. Have you seen the land cleared down there?

A. I have seen quite a good deal of land cleared there. In fact there isn't a ranch right in my neighborhood there but what the greater portion of it has been cleared.

Q. Well, do you know why the balance of it has not been reduced to settlement?

A. Now, in regard to that, there is people would make homes there if they could buy this railroad land and buy it right, they could make good homes on it; but

they are kept out because it is withdrawn from the market.

Q. Well, this land that is withdrawn from the market and that is not settled upon, is there any difference between that land and the land that has been settled on?

A. Oh, as I said a while ago, it is just about the same character of land.

Q. I didn't ask you with reference to the land that is not tillable. How is that as to being grazing land, and what quality of grazing land?

A. Well, the principal part of that country is good grazing land; both timber and open land is good grazing land.

Whereupon witness testified, that the timber, when one gets pretty well back in the mountains, is principally white fir. When one gets a little lower down, there will be considerable red fir and pine. His father's homestead is now used for farming by Bonny Brothers, but right at present it has been turned back to his father. His father sold it to them and he had to take it back. It is still in cultivation. His father did not leave the place because he could not make a living on it, but got too old to farm any more and sold out on that account. Land is worth there, after it is cleared and put in cultivation, from fifty to seventy-five dollars an acre, taking a whole quarter section of land. Cost of clearing that land and putting it under cultivation depends altogether on the kind of timber and brush that is on it. There is some of that land that cannot be cleared, some rocky land that would

not pay to clear up. Take a quarter section, there might be portions of that land that would be too rough and rocky, but there is very little of it that would not pay to clear. That applies to land that has large timber on it, as well as that which has small brush on it. The heavy timbered land would be the most expensive to clear to get out the stumps. They do not clear the brush before they grub it, they slash it and they clear it different there. Some slash it down, burn it off, and then grub. Others grub and burn as they grub the brush out, and some use a stump puller, and some grub it with a hoe. There are all ways of cleaning it up. They blasted a good many of the stumps out in his part of the country, and some few have used the charpitting process, but they have mostly cleared by blasting. The principal part of that country there now will grow all kinds of small grain, corn, oats, wheat, barley, potatoes, cabbage, onions, beans, and all such as that, and fruit grows all through that country wherever he has been—such as apples, prunes, peaches—some parts won't raise peaches, but then the greater part of it will, and pears also. Blackberries, raspberries, strawberries, all kinds of berries like that grow good there. The quality of the fruit is just as good as they have in the main valleys there. The altitude at his father's place was about 1860 to 1865 feet, and the altitude gradually increases as one approaches Mt. Pitt on the east. He could not say what the altitude is about twenty miles east of this Lake Creek post-office,—that is, up about Fish Lake or next to Mt. Pitt. There are settlers about ten miles

from the summit of Mt. Pitt. The kind of crops that can be grown does not change very much when one gets into the higher altitude. They raise quite a good deal of stock in that country at the present time—a good many cattle are raised in that country. They raise hay to feed them in the winter, and turn them on the range in the summer—range them back in this Mt. Pitt country, all over from Lake Creek up to Mt. Pitt and all through there cattle are ranged, and the head of Dead Indian country is summer ranged. The land that is cultivated is fenced so that the balance can be used as range. Dairying business is carried on to a small extent there, but not a great deal. They are about fifteen miles from Eagle Point market, and about twenty-nine miles from Medford from where he is at the present time. He is now working for Mike Hanley at the Hanley ranch on the North Fork, about four or five miles east from Lake Creek. They grow meadow mostly on that ranch, meadow and fruit, they have a home orchard there but they do not market their fruit. They are engaged in stock raising and raise fruit for consumption on the ranch there. The roads between there and Medford are not very good. There is a wagon road east from Lake Creek to Fish Lake, which is fairly good. One can go over it with a wagon. There are a good many settlers up there in each township in that general country he has been describing, something like twenty or twenty-five in the back district, and down in the Lake Creek country all the land is settled with the exception of the railroad land.

Q. Do you know whether the holding back of the railroad lands has affected in any way the development and settlement of that country?

A. Oh, I think it has to a certain extent.

Q. How does it affect it?

A. Well, it keeps people out, that there is homes there that they could make homes on it if they could get hold of the land.

Q. It has been testified here in this case that there is not a quarter section of railroad land within this entire grant that would support a family, a settler and his family. Is that true?

A. No, I think that statement is a little off.

Q. As these other lands have been settled up, to that extent has that reduced the available range in there?

A. Why, certainly, it has reduced the stock range. The more they settle the less out range we have.

Q. Have you noticed any change in that respect during the twenty years you have been riding in there?

A. Oh, a great change, yes.

Q. When did this increase in settlement take place?

A. Well, now, in my country it has just gradually settled up. They keep getting back, you know, gradually. It has been that way all the time you know. There was no rush of settlement. It just gradually settled up.

Q. And that applies to this territory generally,

does it?

A. Yes.

Whereupon, on cross-examination, witness testified: that George Ratcliffe joined his father's place on the east when his father went in there. There was also Swingle up Lake Creek, and then just above there was his father's brother, Sam Randles; then came Tongue, a German, and then just across the creek was Peck, and then came his father's place and George Radcliffe, and then Perry Farlow at that time. Those people were all there and were on homesteads. These homesteads were not on Lake Creek at all, but were on the South Fork of Little Butte Creek. They settled on the creeks in those early days because it was natural that a man would go along a creek to settle where he has a chance. The land along the creek bottoms, a man has access to water and all. The bottom land was not more open than the others, it was not so much that the land was level as that the water was there and the bottom land is a little better land on an average than hill land. The lands of these settlers ran on each side of the creeks. They put their houses on the bottom along the creeks in those early days. There is some vacant Government land within a radius of twelve or fourteen miles of Lake Creek. These Government lands that are left would average about one-fourth agricultural land.

Q. Well, now, you said 25 acres is enough on each quarter section to support a family of this land, if it was cleared.

A. It is, when they can get in and work it, it is enough.

Q. Why don't people go in and take these vacant Government lands that are in there?

A. A good many people don't like to get in and work hard enough to make a living on that.

Q. Well, there is forty acres in there, and there is eighty, and there is 120 and there is 160 acre tracts, and there are some much larger tracts in that territory, all of Government land today, has been from the beginning, and is unsettled, nobody on it.

A. Can you tell me where those lands are?

Q. No, I say within twelve miles of that Lake Creek settlement that you have been over.

A. Yes.

Q. Now, you say there is some Government land there. Whatever there is there that is vacant, why don't the people take that?

A. Well, that I can't say.

Q. Isn't it because those lands are not worth taking up?

A. No, at the present time I don't think there is, that you could get but very few 160 acres there that is not worth taking up.

Q. Well, if there are any Government lands in there, you think they are worth taking?

A. Yes, sir; I do.

Q. You don't know why they are not taken?

A. No, sir; I don't know why they are not taken. But I don't think you will find them in that area up there but what is worth taking up.

Q. Well, now, then, most of the settlements in that twelve by fourteen miles each way from Lake Creek and then east of Lake Creek to Mount Pitt, and from Lake Creek over to Big Butte, are on the streams or headwaters of these various creeks, are they not?

A. Well, they are close to the creeks, most of them.

Q. Now, your father cleared his land along the creek bottom, didn't he?

A. Yes; also hill land.

Q. The alfalfa is on these creek bottoms?

A. Certainly the alfalfa is on the creek bottoms.

Q. They don't raise this alfalfa up on these hills?

A. No, they don't raise it on the hills.

Q. And the orchards are nearly all down in these creek bottoms?

A. Well, there is orchards there that is on hillsides.

Q. I am not asking you to say that there are no orchards anywhere else, but the orchards most of them are on the creek bottoms now?

A. Along those farms, those home orchards are mostly.

Whereupon witness testified that, they do not raise any fruit for the market up in that country and there are no apples shipped East that he knows of from anywhere except down around the valley around Medford. Eagle Point is on a little railroad known as the "Jim Hill" road, the Pacific & Eastern. It was built a short time ago. It runs out from Medford to Eagle Point and then to Butte Falls, and is in operation. There is a saw mill at Butte Falls but it has not been there a great while. It was put there just before the railroad went in there, he thinks. There is a portion of the country there that is owned by timbermen. He thinks that probably right through that Butte Falls country, the timber would average a little better than some other parts of Jackson County. He has been through the Jenny Creek country, but does not know anything much about it and does not know whether it is good timber or not. He never cruised any timber. In his riding after stock, he gathers up stock and takes them on to the range and goes out and salts them. He did this for Mike Hanley, who has a ranch on the North Fork of Little Butte. The water supply for Medford is taken out of the North Fork of Little Butte. The settlement above the intake on the North Fork of Little Butte is very thin. That is the only place the town of Medford could select to get water. He would not say that they selected it on account of settlers but he could name the number of settlers if desired. There is Ilinger and George and Ed Frye, Gus and August Alder, Milo Conley, John McAllister, Charlie Turrell and D. Brad-

shaw, who all have claims. The Fry boys have been settled there for the last seven or eight years, and Conley settled there twelve years ago. There is no cleared land on the creek. He did not get any clear land at all, excepting a little glade up on the side of the mountain. The rest of his land is brush land, has been a burn at one time, part of it, and part of it is timber. He raises goats for a living and has about two hundred head, which pasture mostly on his place, which is partly fenced. He would judge that there is about sixty acres fenced, and about eight or nine acres cleared and under the plow. The Frye Boys are up on a bench, clear away from the creek on the side of the mountain, about a mile and a half from the creek. It has been timber land at one time, pretty heavy timber in there, and a fire burned it and they raise meadows on this place. One of them has sheep, the other has a few goats, and they raise vegetables and work around various ways to make a living—he couldn't tell just what. They sell a few vegetables to farmers around there—that is, to other settlers, while they are making a living, some few. They do not sell to the saw mills—there is only one little saw mill in there that they could get to. It depends upon the location about the timber—what kind of timber it is. In this country up there that he has just been describing, timber is very scattering. There isn't any timber there where that old burn was that is of any account much. He is not acquainted with the Lamb homestead. He has been through that country, but don't know anything about the sections and would not know what part

of the country the sections were in if one would name them.

Q. You could hardly apply for a quarter section up there outside of these burns, but what you would get pretty good timber on, could you?

A. The timber is not bad. It is scattered timber all over that country.

Q. I know, but a good many people have gone in there to buy this land for the timber? That is right? Haven't they?

A. Well, that I don't know much about. There has been quite a lot of timber dealing done, as I have heard of, but as to know it myself, I couldn't say.

Whereupon witness testified, that he never took a piece of Government land himself, either homestead or timber claim. He has been there about thirty-one years, something like that, and was fifteen years old when he went out there, and never took a homestead or timber claim. He was a stock man.

Q. You were a stock man?

A. Yes, sir.

Q. Well, now, this stock, have you ever herded, or driven, or rounded up several hundred head of cattle into the range, driven them up or collected them up?

A. Yes, sir.

Q. Whom did you do that for?

A. Mr. Hanley.

Q. Well, now, these cattle that are herded in that way all the way back to Mount Pitt, they roam over all that vacant land, whether it is owned by timber people or by the Government or by the railroad company?

A. They do.

Whereupon witness testified, that practically the only thing that is enclosed is the land that they farm, or that they want to pasture lower down. There is a lot of that land, Government land and railroad land, that is not fenced. If all of these quarter sections were fenced, the herding business would have to stop. He thinks that about 40 per cent of this land would be agricultural if the timber were cleared. Bonny Brothers bought his father's place about two years ago last August and agreed to pay $8,000.00 for the three hundred and twenty acres. They were not able to make the payments and his father had to take it back.

Q. What is this land that you have described, in a general way now, I mean, outside of these lands that have been settled upon, like your father's place, land that is owned by the railroad company, for instance, and other land that is not actually occupied by settlers, excluding now the improvements in houses or barns or fences, what would you say these quarter sections were worth per acre today on an average?

A. Well, now, that is a hard question to answer. I am not posted on the land prices.

Q. Well, you said, in answer to counsel for the Government, that this land was worth from sixty dollars to seventy-five dollars an acre. Now, what land did you refer to?

A. I referred to lands—he asked me about these lands that was cleared up ready for——

Q. Those bottom lands?

A. No, these lands that is settled, and been settled, been partly cleared, and what is left that is about the way they would range. Not the outside range country, that has no settlement or anything on—that I didn't have reference to at all.

Q. Well, now, what would you say that was worth, that that is outside of these that are settled on, say on railroad sections in that vicinity?

A. Well, I would just have to make an estimate of my own.

Q. Yes; well, now, what is your judgment of what it is worth an acre, take it a quarter section apiece as they run, and average it.

A. Well, I would say about $30 an acre.

Q. So that if a man applied to purchase a quarter section of this land from the railroad company at $2.50 an acre, and he was sold this land at that price, he would make about $27.50 an acre, in your judgment, without having to do anything in the way of clearing it up.

A. Well, that would be my judgment on the land, that that would be about what it would be.

Whereupon witness testified, that he had never applied to purchase any of this railroad land. He is now and has been working for two years for Mike Hanley by the month, and gets $75.00 a month and board for his family. He is an experienced stock man and the stock business of Mr. Hanley he thinks is profitable. He thinks he makes some money out of it. Hanley owns and pastures over his lands 750 to 800 head of cattle. He ships some and sells some right there in the home market, sells to local butchers, and some he ships by rail. He is about the largest stock man in that vicinity. There are others who have quite a few head and they all follow the same general business—when they are in the stock business. They turn their cattle out and the cattle go where they please, and they do not pay anything for the use of the lands that they range over that he knows of. Some of the stock goes into the Government reserve, the Cascade Forest Reserve, but he does not know what they pay for running on the reservation. A part of Hanley's cattle go into the reservation. He gets permits. There is good grass on the reservation.

Q. Well, it is pretty nice for the United States to have the reserve there for these stockmen to pasture on, and for this railroad to have these lands out so they can pasture on, isn't it, quite profitable to them?

A. There is good grass on it.

Whereupon witness testified, that there is no shipping of apples done from Lake Creek. There are quite

a number of little small orchards all through that country for use as home orchards. There are a few strawberries shipped, not a great many. They do not ship any pears from there, but ship quite a bit of butter and eggs—such as that. They are taken down to Medford and sold there. Lake Creek is just a postoffice and was established about twenty-two or twenty-three years ago. and is about twenty-five miles from Medford. The foothills begin east of Medford, going out to his place, just after one gets across the desert, less than ten miles. The country around Medford is practically level, and the level country extends almost from Tolo clear up to Ashland, where it begins to get quite hilly before one gets to Ashland after passing Phoenix. At Phoenix, it begins to climb pretty well. It is nearly level as far west as Jacksonville. The foothills begin almost at the town of Jacksonville, and the foothills begin about ten miles notheast of Medford on the way to Eagle Creek.

Whereupon, upon redirect examination, witness testified, that this land could be used also to raise goats on. This is not being done to a very big extent, there are quite a few goats. Mr. Coshow and Mr. Conley have some, and he cannot name the parties who have several small bunches. There are quite a few goats in there.

Q. You think at least eighty per cent of the quarter sections in there would support a settler and his family?

A. Yes, sir.

Q. Now, this remaining twenty per cent, is that

general in its distribution, or is it in certain localities?

A. It is just in certain localities. Well, there would be some quarter sections, you know, that would be rough, and some that would be along like say in canyons and places like that.

Q. Well, are those quarter sections that could not be utilized for the purpose of settlement on the even numbered sections as well as the railroad sections?

A. Yes, sir.

Q. Do you know whether it is a fact that the lands that have not been taken up for homesteads, by homestead entries down there, are lands of that character?

A. It might be. I don't know where those lands that he had reference to—I don't know where they are located.

Q. It is your best judgment that the available lands that were Government lands have been taken up?

A. Yes, sir.

Q. Now, you say you think these lands will average about $30 an acre in there?

A. Yes, sir.

Q. Counsel for the defendants asked you if an individual could purchase them at $2.50 an acre if he would not make a profit without doing anything. I will ask you, if the railroad company has only a $2.50 interest in those lands, and it can keep them, will it not make $27.50 an acre without doing anything?

A. They would make the same profit, certainly.

Mr. Townsend: I will withdraw the question.

Q. Take 160 acres, with 25 acres of good land that can be cleared and cultivated, such as you have described, and the balance of the land being average pasture land that there is in that country, about how many head of stock can you raise on that 160 acres?

A. On that 160 acres about 50 head.

Q. Would that make a comfortable living for a settler?

A. Yes, sir.

Q. You mean cattle?

A. Yes, sir.

Q. Would that make a comfortable living for a settler?

A. That many head of cattle will.

Excused.

Whereupon CHARLES A. EDMONDSON, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-five years of age, lives at Butte Falls, Jackson county, Oregon, and has lived in Jackson county about twenty-seven years. Since residing in Jackson county, his occupation has been farming and stock. His father lived in Jackson county and was a rancher there. He has lived and been engaged in farming near Butte Falls, in the Butte Creek country,

and has resided in that teritory for twenty years. The character of his farming was hay raising and such as that, and cattle, but he raised no grain to thresh. They sowed grain for hay. He is not a great deal, but is a little, acquainted with the farming business in Jackson county, and is acquainted with the farming business in the territory with which he is acquainted at Butte Falls. Referring to Defendants' Exhibit 259, he is well acquainted from Butte Falls around there in townships 33, 34 and 35, ranges 2 and 3 east, and has been over these lands sufficiently to acquaint himself with the farming business of these townships quite a little. The general character of that country there is that it is a timbered country. It is a free, loamy soil, and of the same general character, generally speaking, pretty much through there in this territory. There are several farmers in that area. They raise mostly hay, vegetables, berries, and such as that. They raise grain, sow lots of wheat in there for hay. They raise oats, some rye, barley and wheat, and some corn—but not much corn because they do not get so much to the acre for feed. They raise cattle, hogs and fruit there. He went over this land riding through for stock, hunting and looking through the woods, referring to townships 34, 35 and 36, ranges 2 and 3 east.

Q. Township 34, range 2 east contains between three and four thousand acres of unsold railroad land, township 35, range 2 east the railroad company still retains a substantial part of the original grant in practically every section, and the same conditions exist as to 36,

2 east?

Q. How much of the land in that area that you have testified concerning would, in your opinion, be suitable for settlement purposes by a man who would settle upon the land for the purpose of making it a home and engaging in the farming business; that is, on each 160-acre tract described, not necessarily by quarter section, but by legal subdivisions of forty acres lying contiguous.

A. Oh, I think half of it.

Q. What percentage of plow land would a man be able to get on a 160-acre tract, in your opinion?

A. I think it would average forty acres on every 160.

Q. Well now, do you mean, Mr. Edmonson, that only half of it, half of this entire area, would be suitable for settlement?

A. No. I meant there would be half of it would be agricultural to the plow—would be plow land.

Q. I intended to ask you, Mr. Edmondson, how much of this land could be taken in 160-acre tracts, for settlement purposes, by a man who was seeking to make a home, engaging in the farming industry to make his livelihood from it.

A. Oh, I expect a person could take 75 per cent of it probably as homestead land that way.

Q. How much land in this community would you have to have on 160 acres to supporta family; that is,

how much plow land would be required by a man engaged in farming?

A. Oh perhaps forty acres.

Whereupon witness testified, that his father lived in township 34 south of range 3 east, and raised hay and other crops on his ranch there. There is quite a little of this area in flats on the creeks that run through there, and there are bench lands in that country. The bench lands are timbered and have a loamy soil through that country, and brush. The benches in area vary somewhat, some of them are good big benches and some of them are not so large. It is practically a level country from the mouth of Willow Creek north five or six miles, just a bench bottom. His farm or homestead had one hundred and sixty acres in it, and he had six acres under cultivation. He made his home and maintained his family there, and made a living on that and his stock, made his living in the farming business—right in the stock. He was on the homestead. There are prairies scattered through the country, open land that is free from timber, and this covers a considerable area. There are quite a few prairies there, but he does not know the extent. He does not think the expense of putting those lands in cultivation would be great, and it would not be necessary to remove any timber from the prairie lands. He does not think there is any growth on any of that land that would prevent the land being farmed. The soil is such as would raise grains, hay, vegetables and fruits mentioned by him as being raised in that community. The land that could not be tilled would be good grazing land, unless

there would be some rocky point or something that it just happened to be. Outside of a little grazing, there might be places that would be rocky and perhaps worthless for any purpose, but not many of them, not much of this land would be that way.

Q. In your opinion Mr. Edmondson, what has been the effect of the railroad company's failure to comply with the conditions of this grant and sell these lands to actual settlers in 160-acre tracts at $2.50 an acre—what has been the effect upon the community?

A. I think it has kept our settlement back in there.

Q. Has it affected the farming business in that country?

A. Why, to a certain extent, I suppose.

Whereupon witness testified, that some of the lands that have been timbered have been cleared in that community and are now under the plow. Farms of that character exist in that country.

Whereupon, upon cross-examination, witness testified, that he does not mean, by saying that these farms have been cleared that a few acres on each quarter section have been cleared,—not exactly that,—and he does not mean that a whole quarter section has been cleared. He don't know any whole quarter sections that have been cleared. Generally, the lands that have been cleared are where each settler would have from five acres to probably forty acres cleared. Fredenburg, near Butte Falls there, has fully forty acres cleared. He has been

there quite a little while. The balance of his land is pasture land, with scattering timber on it. The homestead of witness is in section 32, township 35, range 3 east, which he took in 1904, and proved up on it in six years, living on it all the time there, keeping his family there. He still owns and lives on his homestead. His nearest post-office is Butte Falls, seven miles distant. None of the land in the vicinity of his place has been logged off in there. Some of it has been sold to timber people. He does not know W. S. Dewing, but thinks he is a Kalamazoo lumberman or timberman. He could not tell in regard to the acreage of timber in that general section of Butte Falls. He has heard that Dewing had timber holdings in there. There is a saw-mill company there at Butte Falls, called the Butte Falls Lumber Company, in which Dewing is interested, but he cannot tell who the Company is. They do not operate. They have suspended at present. They have not cut a great deal of timber in there. He thinks these timber quarters in that section around there are now worth perhaps thirty dollars an acre, or something like that. If a man had a good timber quarter and there were no impovements of any kind on it, he could sell it for about thirty dollars an acre, but he does not know of any being sold at the present time. Timber is regarded as valuable in that country. There have been timber deals going on there, he thinks, for six or seven years, but he does not know exactly how long. He does not know of many timber deals there lately. He knows that quite a lot of timber is in there yet, and there are quite a lot of private holdings in there in

the hands of homestead claimants. He thinks some of these homestead people have sold to timber people. He is not so well posted in regard to who has their land, only those around him. Near him there, he knows in his neighborhood about who holds their land and those away he could not tell. There is some good timber on his homestead and it is about all saw timber. He thinks it would run somewhere near about three million feet, board measure, on his hundred and sixty. He could not tell what he could have sold his quarter section for, for the timber that is on it alone, in the last four or five years, as he has not had it on the market and he never had an offer for it. He expects his quarter section would be worth thirty-five hundred dollars all right. He knew it was timber when he took it up—he knew there was timber on it. He had lived in that vicinity for twenty years and he is now forty-five years old. He filed on this homestead in 1904, that was about the time the country started to settle up in there. People began to come in and take homes but at that time he does not think there was any timber selling in that country. About that time people began to look at the timber and consider that the timber was worth something, he thinks. He never had much experience in the timber business, and was not posted in the timber business, and was no timber dealer. There were not many timber deals in Jackson county until about eight years ago. He does not know of any old pioneers that have taken land in there. They were most all of the second generation—the drifters came in from other countries. He supposes that he was like a good

many other fellows,—did not take his homestead in time, did too much running around, or something or other.

Q. Now, don't you know, Mr. Edmondson, that it was because homesteads became more valuable because the timber began to be worth something? Isn't that the fact?

A. Yes, and our government land began to get more scarce.

Q. Well, but the land was still there—the land didn't run away?

A. And I had a right to 160 acres of it. Therefore, I took it.

Q. I understand. Well now, Mr. Edmondson, will you, under your oath, say that you didn't really take that for the timber that was on it?

A. Not altogether I didn't, no.

Q. Well, but you wouldn't despise the timber because there was timber on it?

A. Oh no, I didn't, no.

Q. It was a pretty good inducement, wasn't it?

A. It was an inducement, and I have got good land with it.

Q. Yes, I know, when you cut the timber off it is all right.

A. Yes, it is. You are right.

Q. But the timber was what made you take it, wasn't it?

A. Not altogether, no.

Q. Chiefly, it was the chief reason you took it?

A. I could get a bunch of land with timber on it, and I took it.

Q. Well, I will ask you this question: As a matter of fact, didn't you take it because it was a good quarter section of timber land, that had three million feet of saw timber on it?

A. And agricultural land, that is the reason I took it.

Q. Well, how much have you got cleared?

A. I have got about six acres.

Q. You expect to be how old when you get the rest cleared?

A. I don't know.

Q. Now, as a matter of fact, you never expect to clear the rest of it, do you?

A. Well, now, I couldn't say to that. If I get some way of disposing of my timber some way or other so I won't have to burn it and waste it on the ground, I will clear it probably.

Q. In other words, if you sell the timber to good advantage you may clear up some of it, unless you get too much money for the timber? Then you will live like a gentleman.

A. If I could sell the timber, I can probably clear it, as you say. But I can't cut my timber and waste

it there on the ground.

Q. You wouldn't think of doing that?

A. No, I wouldn't think of doing that.

Q. The timber is too valuable to burn it up, isn't it?

A. That is true.

Q. I say the timber is too valuable to burn it up, isn't it?

A. I cleared six acres there and burned it, and found it quite a job.

Q. I say the timber is too valuable to burn, isn't it?

A. It is too valuable to burn.

Whereupon, upon re-direct examination, witness testified, that he has made this homestead his home with his family ever since he took it up, and never engaged in the timber business, and is no speculator in timber. His purpose in taking the homestead was to get a home.

Q. Now, about the time that you have testified that a demand from people commenced coming in there, taking timber, was there any increase in the demand for land for settlement purposes?

A. Sure there was.

RECROSS EXAMINATION.

Q. Why didn't you take a quarter section of that good land there that didn't have so much timber on it for a homestead, if you didn't want the timber?

A. I didn't know where to get it.

Q. Is it all timbered?

A. Pretty well the government land is all timbered in there.

Q. Couldn't hardly get a quarter section in there but what has pretty good timber on it?

A. There are others ahead of me that gobbled that up.

Q. Did you ever apply for a railroad quarter?

A. I applied for a railroad forty.

Q. Where was that?

A. Section 9, township 35, range 2 east.

Q. Was that a timbered forty?

A. No, sir.

Q. That was pasture land?

A. There was about thirty acres on the forty that is just black sticky land, oak.

Q. How much did you offer to pay for it?

A. I didn't make them any offer.

Q. You just wrote to them?

A. I wrote to the man at San Francisco, and he answered me back, and that settled it.

Q. When was that?

A. That was in 1907.

Q. You didn't make an application on these blanks that these timber brokers have sent all over the United

States and have men sign, to offer $2.50 an acre and file on the land and claim it under an act of congress—you didn't do that?

A. No, sir, I didn't. I wrote to the land commissioner at San Francisco, and he answered me back and said that the land was not on the market and the letter would not be recognized, and so that was all there was to it.

Q. Now, let me ask you are most of these quarter sections out there on the railroad quarters about as good as your quarter section, so far as the timber is concerned?

A. Well, in that territory there, they are.

Q. That is, they would run on an average of about three million feet of saw timber, in your judgment?

A. I think so.

Whereupon, upon re-direct examination, witness testified, that part of the land is heavily timbered and part of it more sparsely timbered. Part of this land that he has just testified about is heavily timbered, and part of it more lightly, but taking it on an average, he would judge that it would go somewhere near what he has stated. There are some parts of it that are glade land, and such like as that, but just to average it up he would judge it would go about three million feet. The glade land would be prairie and open land.

Whereupon on re-cross examination, witness testified:

Q. It would be here and there a little spot that would be what you would call a glade—four or five or ten acres in a spot?

A. Yes, sir; and here and there four or five acres with timber on some of it.

Q. That is what you mean by prairie land?

A. Yes, sir.

Whereupon, upon re-direct examination, witness testified, that this glade land would be two or three acres in lots of it. He does not know of any that he can think of that would be any larger on any of the railroad holdings there. There are some open prairies there, but he does not include those in these little glades. He thinks the most of these open prairis were taken before the grant was given in there,—most of those big, open prairies. Titles to those had passed before the grant took effect.

Whereupon W. T. HOUSTON, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-seven years old, lives in Section 20, township 34 South, Range 1 West, Trail precinct, Jackson County, Oregon, on a farm, and has resided in Jackson County all his life. He was born in Medford, Oregon, and has lived about eighteen years on his homestead. He took his homestead of one hundred and sixty acres about eighteen years ago, and received a patent about seven years ago. He has a family of eight children. He has twelve or fifteen acres of land under cultivation on his

homestead. It was brush land when he first took it, some oak timber on it, and he had to clear all that he has in cultivation in order to render it tillable. He has principally supported his family and himself from his homestead since he took it up. He raises corn, wheat, oats, any kind of small grain, potatoes, beans, cabbage, anything most of every kind, and it is average land for these purposes. He raises apples, peaches and pears. He has been engaged in the farming business all his life; was raised on a farm, and his father was a farmer in Jackson county and has a homestead in township 35 where witness was raised until he was twenty-one and was married. His father's homestead was one hundred and sixty acres, and he had five children. What is not in cultivation of the homestead of witness, he has fenced and keeps goats and a few cattle, he has only twenty goats. He uses that land for grazing. It is cheaper than grubbing for goats to kill the brush. Referring to Defendants' Exhibit 259, he is near Rogue River in section 20, township 34 south, range 1 west. He was raised at Beagle post-office,—his father owned the place where that post-office is, in section 12, township 35 south, range 2 west. He is pretty well acquainted in township 35 south, range 2 west. From there he moved to township 34 south, range 1 west, and has lived there ever since. He knows pretty well the railroad sections in township 35, range 2 west, and township 34, range 1 west, and has a pretty fair knowledge of the country about twelve miles north and south of there, about five miles from Rogue River, north or northwest, through the Meadows country. As-

bestos is a postoffice in the Meadows country, in section 26, township 33 south, range 2 west. He is somewhat acquainted with that land extending from where he lives to that postoffice and some of it beyond the postoffice, and he is acquainted with the general character of the land in the area he has mentioned, and north of where he lives up to the divide, to Douglas County, up Trail Creek,—he has been through that country some and enough to gain a fairly good knowledge of the character of the land there. Where he lives and in township 35, the land is mostly without timber, with the exception of oak and a few pines. As one goes north up Trail Creek, it becomes more timbered. Up pretty near the Umpqua Divide, the timber is pretty heavy. The land that is not taken up and cleared, in township 34 south, range 1 west, is mostly brush, low brush with oak timber, and is about the same thing as his homestead.

Q. Now, Mr. Houston, in your opinion, how many of the 160-acre tracts, what per cent or proportion of the 160-acre tracts in this area that you have mentioned, described by contiguous forty-acre tracts, but not necessarily by legal subdivisions, would, in your opinion, be suitable for settlement purposes, that is, for a man to go on there, as you have done on your homestead, and make a home of it for the purpose of engaging in farming?

A. I should think that about probably half of the quarter sections something about like the one I have taken.

Q. About half of the quarter sections are?

A. Yes, about the same, worth about the same, that is considered as good as mine was when I took it up.

Q. That is in that township?

A. In that township.

Q. Well, how much plow land could they get on each one of these 160-acre tracts?

A. You could get at least fifty per cent of plow land if the brush was off in 21. That is right due east of me. And in 17, corners with me, and in 29, corners on the south, it would make, I should suppose, about 50 per cent; about half the land would pay to cultivate if the brush were off so you could plow.

Q. How many of the quarter sections would be suitable for settlement, would contain enough plow land that a man could support himself, in this township, leaving a comparison of your own homestead out of it.

A. Well, what I am acquainted with—of course, I don't know how many has been taken up; I don't know exactly how many railroad quarter sections there are in that township—but what I am acquainted with, why, I should think about three-quarters of those quarter sections would support a family, if he had means to clear enough land to commence on.

Q. Well, now, with this other area outside of the township that you are in there, what would you say as to a man's ability to go on 160 acres of that land, described as I have mentioned before, and engage in farming and make a living?

A. In township 35, it is just similar, about the same thing there is in 34. But north, towards the Umpqua divide from where I live, is a different country. It requires more clearing—there is more timber.

Q. How about the character of the soil?

A. It is just as good.

Q. And the conditions except for the clearing would be practically the same as in the other townships.

A. The land is just as good, if not better, if the timber were off.

Whereupon witness testified, that the failure of the railroad company to sell this land to actual settlers at $2.50 an acre in the community in which he lives has delayed settlement to an extent. If this land was on the market, there would be at least half of the quarter sections that there would be someone on if it was put on at a reasonable price,—say from $2.50 to $5.00 an acre. People would settle there as he has done on his homestead and make a home out of it. If it was government land, there would be more than half of the land settled up.

Whereupon, upon cross examination, witness testified, that his father's claim, by the road, is six miles away from his. The nearest postoffice or trading point of witness is Trail Creek. Trail Creek has a couple of stores and a postoffice. There has been a postoffice and small store at Trail Creek ever since he lived there, about eighteen or twenty years. He is now living on his homestead,

but his father sold his homestead a few years ago. The homestead of witness is in Trail Creek precinct, on a branch called Long Branch, about five miles south down the river. Trail Creek is marked on Defendants' Exhibit 259, Stewart Creek, but it has always been called Trail Creek, and it empties into Rogue River, about a half a mile below his homestead. He cannot tell how large Rogue River is, but he thinks it empties into the ocean and rises in the Cascade mountains north and east of him. He has been living on his homestead eighteen years, and went on the homestead when he was twenty-nine years old. At the time he went on his homestead, there could not have been possibly more than half an acre of it clear or open.

Q. Now, this brush that you have cleared up on your homestead—I think you said twelve to fifteen acres you had clear?

A. Yes, sir.

Q. What kind of brush was that?

A. Well, it is manzanita and chaparral, what it is called up there—I don't know what you would call it.

Whereupon witness testified, that the brush on the ground is pretty thick, but it only grows up about as high as one's head mostly. The chapparal don't make a very large root,—one can pull them with a good team when the ground is wet. The scattering oak grubs, they either have to grub or pull with a stump puller. These are what might be called foothill lands. He cannot tell the exact height above the river at that place.

There is a break near the river and he is up on what one might call bench land. The Rogue River at this point has a narrow bottom, probably, on an average along where he lives, about a couple of hundred yards back from the river. The valley known as the Rogue River Valley, in Jackson County, in which Central Point, Tolo and Medford are situated, lies south of him a considerable distance. Central Point is about eighteen miles distant. There is a valley opposite his place. The valley opens out down the river after one goes down. There are streams that empty into Rogue River, and of course there is flat counrty. The valley proper, the bottom of the Rogue River proper, does not open out to amount to anything in farm lands until one gets down to Grants Pass or below. The bottom near the river is comparatively narrow until one comes to Table Rock, which is about ten or eleven miles from his house. He is north of the Rogue River valley, and Table Rock lies just north of Rogue River and south of Table Rock is the Rogue River valley. There is no valley of any consequence west and northwest from Table Rock. The valley lies back, Sam's Valley country runs back a mile. There is the Modoc orchard in Sam's Valley country, and between the two Rocks there the bottom widens out after one gets to Table Rock, and there is a pretty large valley runs back plumb out between the Rocks, and it is all level back to Sam's Valley. He thinks that the valley where the Modoc orchards are, along the Rogue River, is just about a mile and a half wide back to the Rock. It is a large valley as measured by valleys out

there, for bottom land. It is wider than anywhere north or northeast of there. The mountains at lower Table Rock close in near the river from that on, and next to Gold Hill, these mountains are pretty steep and abrupt, but he could not tell how high they are in there.

"Q. Those mountains are not much account, are they?

A. I cannot tell you that either. I have never tried."

I am not much acquainted from Sam's Valley down the river.

Q. Don't you know, Mr. Houston, that any man riding along the railroad there, following from Grants Pass up to Gold Hill and from Gold Hill on to Tolo, where you have Table Rock in view, and these mountains on either side in view, can see the Rocks from the train on an angle of nearly 45 degrees, most of that country? Isn't that true?

A. Some of those peaks run up.

Q. Well, it is nearly all peaks all the way down to Grants Pass, on both sides of the river, isn't it, excepting this little valley of about a mile wide in places?

A. I cannot tell you anything about the country below about Gold Hill.

Whereupon witness testified, that he had been on the train along there, and could see how it looks, and it looks pretty rough. It looks like there was a good deal

of chaparral and manzanita on the ground. One cannot see the rocks everywhere. He hasn't taken notice along the road going down the Rogue River. He has been along the line a few times and to look at it, it looks rough and he has seen some rocks, some canyons. He could see a few rocks but he could not tell how many. To the best of his knowledge, he had six acres of cleared land on his homestead when he proved up at the end of five years. Before he proved up and during the time he lived on his homestead, in order to make a living he bought a small tract of about ten acres, and of course worked out more or less around different places. This ten acres that he bought was mostly cleared—there was six acres of it cleared when he bought it. He doesn't know whether this ten acres was part of a homestead or a donation. It was a water lot in section 21. It had been settled a long time before he came there. He cultivated that during the time he lived on his homestead, and when he worked out he did most everything, — sometimes plowed for other people, and did most anything for people that lived near there. He never sold any wheat but had sold corn. He could not tell how much corn he had raised in any one year on his twelve or fifteen acres on his homestead. He sold the corn to his neighbores for feed or seed corn, or something like that, and sold by the bushel. It would be hard to tell how many bushels he had sold for feed or seed to his neighbors during any one year, but he had sold not over, he supposes, fifty or sixty bushels in any one year. He could not tell how much corn he raised

this year, but he did not raise any to sell this year. He had roasting ears for his family, and raised some corn as feed for his stock. He has twenty goats and about twenty-five head of cattle. His cattle run around, he does not keep them inside of a pasture, except the calves. The cattle run out on the range around close there. He had a few cattle that went back with other people's cattle who had larger bunches around the foot hills and up towards the head waters of the divide looking over towards Douglas county, and he occasionally rode back to get them, although he never had more than thirty or forty head of cattle at any one time. He sold some few cattle some years, and some years he did not. In the last few years, some of his neighbors had their cattle run back as far as the divide, about ten to twelve miles up to the head of Trail Creek from his place. When one gets to the head of Trail Creek, along near the divide, the timber is heavy in places. He would judge that most all the timber lands on the even sections up there was mostly taken, although he is not very well acquainted after one gets up near the divide. There are not very many settlers up near the divide, and he could not tell how much of these even sections had been taken up. He thinks there is probably a few kind of waste tracts of government land left up there where there is no land or timber. He has no map of the country and he could not tell exactly. He never cruised any timber nor applied to the company to purchase one of these quarter sections of good timber, up there, and no one ever asked him to sign an application to the company and offer the com-

pany $2.50 an acre, and he never knew about people doing that around in Jackson county, but he had heard of it before he came to court in this case. He usually sold about twenty-five to a couple of hundred sacks of potatoes raised on his place, and some small vegetables like that,—a few grapes and apples, different things. He thinks he could sell four hundred boxes at present. He has about two or three acres of an orchard. There are some Spitzenbergs and Newtown Pippins, a few Baldwins and Bellflowers. He would judge that the market for Yellow Newtons and Spitzenbergs first came up about eight years ago when they began to sell those two varieties or setting them out. He has not shipped any apples by railroad, nor sold any to dealers this year who did ship. He does not think he sold to anyone last year who shipped them out of the county. He never has sold any butter or milk to the creamery. He might occasionally sell some butter to his neighbors, some small amount, but not to amount to anything. He means when he says that about half of this land could be farmed, that after it has been cleared, after the brush and what trees there are, are off, it could be farmed. Further north and into the fir country where the timber is heavier, it would be more expensive to clear than where he is. Referring to Defendants' Exhibit 259, he is on the opposite side of the river from Eagle Point, six miles up the Rogue River. Beagle postoffice is where he was raised, and he is nearer the river than he was when he lived there. He is now in 34 east, and the postoffice is in township 35. There used to be a postoffice

at Etna. He lived right near there about five miles south of Trail, which would bring him just about to the edge of the yellow field shown on Defendants' Exhibit 259, which shows the Rogue River valley country. These are what one would call oak and chaparral foot hills, most of that country. There is as much as about half or three-fourths of those quarter sections in there that are suitable for cultivation, that would pay to clear up, and some whole forties. He might mention a few whole forties that a man could clear, the whole forty and farm it all after clearing them of these oak grubs and chaparral. Chaparral and manzanita and oak brush is the princip growth in that country. There is occasionally a little pine. There is some rock on those foot hills around there. In places it is rocky, but he would say there is half or more that could be plowed without the rocks bothering to much extent. It would not all have to be cleared. There is an occasional one hundred and sixty that one might get. He might mention one or two where one could get fifteen or twenty acres on that is reasonably good land, without clearing at all. That country is mostly south. Trail Creek is five miles above him. It is called Stewart Creek on this map. They always call it Trail there. There are several settlers along in there on the even sections above Trail, but he could not give the quarter section or the exact numbers of their land. They live along the creek and back. Some of them live back along west of Trail. There are several who live back pretty well up on the hill. Some of them have been there about ever since, he has been there from fifteen

to eighteen years. After one gets up Trail four or five miles, most of these even sections have pretty heavy timber in places. There is a little road work up there for the people who live there, and they work in different ways around, and most of them raise pretty good gardens and generally keep a little stock. They run their stock outside all through that country mostly. He thinks the reserve only charges them about thirty cents a head a season for pasturing their cattle. There is quite a lot of that land there in the reserve. He does not know that they have to pay the railroad people anything. It seems as though the country is partly settled where it belonged to the railroad, and they were never asked to pay. The stock roams all over that not fenced. The rule there is if you keep stock off the land you must fence it,—that is, one must fence against the stock. The majority of his hundred and sixty acres is fenced. He might have a few corners around,—he has never had it surveyed exactly.

Whereupon, upon redirect examination, witness testified that, speaking of the quarters of waste land up in the northern part of the Umpqua divide, he means that it is rock, a good part of that country. There are some canyons and deep places where it is broken land, which one might say is worthless without it was just for pasturage. He is in section 20, and section 17 corners with him, and sections 29 and 21 lay right to the east of him in township 34 south, range 1 west, where his homestead is situated. He is pretty well acquainted, of course, with those three sections, and they are pretty much the same

land as his, some probably a little better. He took his because he was right along the road and wanted a handy place to get at. This road he refers to runs from Medford to Crater Lake.

Whereupon WILLIAM BRENNER, witness called on behalf of complainant, being duly sworn, testified, that he is fifty-three years old, resides at Scio, Linn County, Oregon, and has resided in Linn County fifty-three years. He is a farmer by occupation and owns a farm about three miles below Scio, and about ten acres in town, and raises on his farm wheat and oat hay, and raises fruit and vegetables at home, such as potatoes, cabbage, beans, onions, apples, pears, plums, cherries, and he thinks there are a couple of prune trees. He has been engaged in farming in Linn County about three, possibly four, years, and was in the livestock business before that time. He is acquainted generally with the farming and soil conditions in Linn County. He is personally acquainted with these unsold railroad lands in Linn County, township 10 south, range 1 east, township 10-2 east, township 11-2 east, and part of 11-3 east,—that is, the western part of 3 east. He is not personally acquainted in township 10 south, 3 east, but has passed through it and he thinks he is acquainted with the general formations of land there and the conditions of the soil in those townships. He would place the percentage of lands in these three townships that are susceptible to cultivation, that could be cultivated, at about 90 per cent straight through.

Q. What proportion of the 160-acre tracts in forty-

acre legal subdivisions but not necessarily by quarter sections, in your opinion, could be made a home for a settler there, a man who wanted to settle there, and engage in agriculture, if he would go on the land and make a bona fide effort to clear the land of whatever might be on it, and farm it?

A. That varies quite a good deal. Some quarters are practically level, others are rocky.

Q. What would be your opinion as to the percentage of 160-acre tracts, take it straight through, that a man could select there, confining his selections to a section, not permitting him to go out of the section?

A. I cannot explain that exactly. Because some of it is too rough, and the rest of it, part of it would be say a rock cliff on it, and the rest of it you might say practically level, or in canyon shape like.

Q. Well, how many 160-acre tracts, in your opinion, stated by percentage, could a man clear off enough land and cultivate it to support himself and family?

A. Well, I am not posted on that. It would take a good big piece for me to make a living. Some people would make a living on a small tract.

Q. That would depend somewhat on the living that the man had?

A. Yes, sir, and how he worked his land, too.

Q. You testified that 90 per cent of this land would be susceptible to cultivation after it is cleared?

A. That is to the best of my knowledge.

Q. And the other ten per cent, now, what is that?

A. That is rock.

Q. That is waste land?

A. Yes, sir, it is rock.

Q. That is the land that you referred to when I asked you the question relating to the ability of a man to make a living on this land, settling on 160 acres.

A. This land cannot be cultivated at all where those rock are. It is impossible.

Whereupon witness testified, that there is some awfully good timber on this land, and some that is worthless. Take it in five, township 11, 2 east, take it in 8 and 9, there is nothing in that. It has been burned off, it is a big burn, there is nothing there. In 4 there is quite a rock cliff running through there. The timber does not get heavy until one gets farther back in these ranges. It is better after one gets back from the settlements a few miles, but it is pretty good to start in with. The Oregon & California Railroad Company retains a substantial part of its original grant in these townships and ranges, and he is informed that the Northern Pacific Railway Company has large holdings there.

Q. Isn't it a fact that several of these townships are owned practically altogether by the Northern Pacific Railroad Company and Oregon & California Railroad Company?

A. I think the railway company owns all of 8, 11-8 east, and I think there are just two homesteaders, if I

remember right, that have taken it as homesteads. I believe that is all in 3, township 11.

Whereupon witness testified, that he owns about a hundred and fifty acres on his farm, which he rents. The farm is situated near Scio in the Willamette Valley, and a part of it had a growth of timber on it, which has been cleared. There is other land in that vicinity that has been cleared and put under cultivation, and these lands that have been cleared produce good crops.

There was no cross-examination.

Whereupon J. W. HAYS, called as a witness on behalf of complainant, being duly sworn, testified, that he is seventy years old, resides at Gold Hill, Jackson County, Oregon, and has lived in Jackson County thirty-five or forty years. He farmed continually there for about ten years, two miles west of Gold Hill in township 36 south, range 3 west, immediately west of Gold Hill two miles. It is just a mile from the center of town to the end of his line, straight through by line on the south side of the river. He raised everything on his farm that is generally raised on a farm, wheat, oats, barley, hogs, chickens and cattle. It takes all to make a farm. He raised potatoes, apples, peaches and corn. He has his place rented out. He is pretty well acquainted with farming conditions there and soils that produce, and reasonably well acquainted with lands that can be cultivated and crops that can be raised. Some of the land that he has farmed there was river bottom, sandy loam land, and some of it lays back off the river and is clay

soil. The land that is up from the river bottom is called up-land, it is back up-land. It lays on a little creek, close to the creek, and is rolling, not flat, land. It is inclined to be rolling. Referring to Defendants' Exhibit 259, he notices Gold Hill on the map and he has been all over this country in through 35 south time and time again. He couldn't name the places that he has been over because he ran all over the hills prospecting, that is where he ran when he was doing nothing else. He ran all over the hills, but he could not name the sections. He was at Wimer, all through that land and through that country, all through west of Wimer. Pointing to 35 south, range 4 west, where Wimer is situated, and 35 south, range 3 west, where Sardine Creek is, the lower end of this creek is in township 36, 3 west, where it empties into the Rogue River. The upper end of this Sardine Creek is in 35 south, range 3 west, and he is, generally speaking, acquainted with the lands in that township and in township 36 south. Wimer is in township 35 south, range 4 west and he is generally acquainted with that and with the township south of that, 36-4 west, where Woodville is situated, just about the center of township 36 south, range 4 west, he is fairly well acquainted with that. Gold Hill is in township 36 south, 3 west, and he is acquainted with the railroad lands in that township and in township 37 south, 3 west, which is directly south of Gold Hill, and he is pretty well acquainted with portions of that—the north part of it. He is acquainted with and has been through the vicinity of Draper, which is in 37 south, range 4 west, and has been over the lands

in that township. He has not been recently over the lands in Applegate country,—not for several years, but he has been there sufficiently to acquaint himself with a knowledge of the country and the soil and the lay of the land there. He was raised in Applegate, and he was twenty-four years in the Applegate country in Josephine county. Applegate is a postoffice, has a little store, and is in township 38 south, range 4 west. He has been in there, principally along on the river, but has never been back on the side of the mountain. He has been on the main road. There is a creek in 38 south, 3 west, on the main road just before one gets to Jacksonville. He is not very well acquainted through where Ruch is, and he cannot give an intelligent view of the land north of township 35. He knows the lands on Sardine Creek, but he is not acquainted farther north in Jackson county than township 35. West of Beagle, he is very well acquainted, running up into township 34 south, range 2 west, and in 3 west. He has been over in 2 west in the Beagle country. He has been over these lands for different purposes. He has prospected all through that Sardine country, has been over every acre of it. For several years he spent his odd time prospecting in through there, also on the south side in the Gall Creek and Foote Creek region in there, which is about five or six miles from Gold Hill,—probably not that far by lines but in traveling the way they go. He has been over the land other than when he had prospected. He had stock in there. Years ago he had stock which ran in on both Sardine and Gall's Creek. He had cattle

and horses in there. He has been over and is acquainted with the railroad lands in the township in which Gold Hill is situated, 36 south, 3 west, and the land is generally clay soil, with some rocks on it, scattering rocks, covered with brush and scrub timber. From 35 per cent to 40 per cent of that land, from his observation from seeing land like that, that has been worked through the country there the last few years, could be made susceptible to cultivation. They grow most everything on it, when a practical farmer gets to work on it. The other lands that he has mentioned as being acquainted with, compare about the same with the railroad lands in the township in which Gold Hill is situated, take it through, conditions would be about the same.

Q. What is your opinion as to the ability of a man to take 160 acres of this railroad land and make a home of it, use it for farming purposes?

A. Well, that is a question of the ability of the man. It depends on the ability of the man in regard to that. If he is a practical man, why, he could make a living, and there are some men that couldn't make a living on 160 acres of good land.

Q. His ability and industry would have something to do with that?

A. Yes, sir.

Q. Well, take a man, an industrious farmer, what would you say as to his ability to make a living?

A. Yes, he could utilize it by raising what stuff is

there, and having his chickens and cow and hogs with him, and that all counts in with practical farming with me. I couldn't farm unless I had cattle and some cows and pigs and chickens to help make the farm pay, to use right at home to feed up your waste.

Q. What has been the effect, Mr. Hays, of the railroad company's failure to comply with the conditions of this grant and sell the land to actual settlers at $2.50 an acre in 160-acre tracts—what has been the effect in that community where you have resided for 35 or 40 years?

A. Well, it keeps the settlement down so that it would be sparsely settled, you know, is the effect, because I know of persons that wanted to buy that and couldn't buy that, wanted to settle and had to go away.

Q. Are lands of similar character farmed there and used as homes by farmers?

A. Yes.

Whereupon, upon cross-examination, witness testified, that his place was a part of the Jacob Gall donation land claim, and is at the mouth of Gall's Creek, and is on the south side of the Rogue River, and originally consisted of three hundred and twenty acres. There are about sixty or seventy acres of it bottom land. The balance of the land is clay soil and runs back up Gall's Creek, on both sides of it.

Q. Have you any hills on your place, any of that rough hill country on your land?

A. Nothing but benches, old bench land. It is not hill, because this was taken in an early day.

Q. They took it just the way they wanted it?

A. Took it the way they wanted it, yes.

Q. Under the donation act they could take it in any shape they please?

A. Yes, sir, at the time they took it, they could have taken it that way.

Whereupon witness testified, that in prospecting over these townships, he was sticking holes and prospecting for gold. He does not consider that country around Gold Hill, all through there, a pocket mining country. It is a mining country. He has prospected these lands for minerals of some kind. He located several mines and has taken out some money. Then he has located some mines and let them go back. He didn't have money enough to develop them. He never developed a mine himself. He means when he says that he prospected and took out some money, that he took out some specimens of rock and had it milled. There was a mill there in the country to mill it with, part of the time, he had it milled at the Sardine mill and some at the Gold Hill mill. There is a quartz mill at Gold Hill. The valley between Gold Hill and Grants Pass, along the Rogue River, is a narrow valley along both sides of the river. In some places, the hills back of Gold Hill and on either side of the Rogue River go up very abrupt right at the river and then they break back. The greatest elevation

is next to the river, and then they break off back, it is more accessible to travel. Some places one cannot get straight up from the river. He does not consider the timber on these railroad lands in these townships that he has been over merchantable timber. It is scrubby pine, oak and fir. There are spots of rocks on some of these quarter sections and on the government land, just the same as on the other, the whole country is more or less spotted. There is some government land in there adjoining his place, it is too steep to be taken up and there is no timber on it worth taking. There are some of these railroad lands—some of these railroad quarters in that same condition—that is, the railroad land is spotted. Where the peaks run up abruptly it may be a railroad or it may be a government forty or eighty right on the top of one of these back-bone or ridges that run through there. The lands along the creek are best as a rule—really a little the best for certain purposes, and you really get more level land along these creeks as a rule. These farmers that live back on these farms back of Gold Hill have real farms. Some of them have one hundred to a hundred and fifty acres in cultivation back in these hills. There are some right up on Sardine Creek there, just up on the high benches away from the creek, not right immediately on the creek, they come down to the creek, but the land they cultivate is back on a high bench.

Q. Sams Valley is a pretty good farming country, isn't it?

A. Right in Sams Valley, yes, sir.

Q. And the Evans creek country is pretty good too?

A. Yes, sir.

Q. They are all little tributary streams that run into the Rogue River?

A. Yes, sir.

Q. Well, now, don't you know, Mr. Hays, that this railroad land that you have been over until about seven years ago was on the market at $2.50 an acre, nearly all of it, especially that that was prospected over for mineral purposes?

A. No, sir, I don't know it.

Q. Don't you?

A. No, sir.

Q. Did you ever apply to purchase any of that land that you prospected over?

A. I had a partner that applied for a piece on Foote creek that they wouldn't sell it to him.

Whereupon witness testified, that his partner wanted one hundred and twenty acres for orchard land; this was about eight or ten years ago. He does not know that he offered to pay anything, but the company refused to sell it to him, as his partner reported to him. They were partners and it was a business transaction, but he did not see the communication from the company. He applied himself, personally, to purchase only one little piece. There was a little seven acre tract lying between

his place and the river—a little fraction of seven acres—which was sandy loam land, mostly sand, and was on the river bottom. He did not buy it, but applied to purchase it about twelve years ago. The Company refused to sell it to him on account of the water front, or something of that kind. He paid but little attention to it because it was a small fraction. That piece of land where it lays is worth one hundred dollars an acre because it is water front. He wanted it because it joined right on to his land and connected him with the river and he could use this land and would join his donation land claim. He owned stock which roamed back five or six miles from his place on Gall's Creek, for two years, which pastured all over the land that was unenclosed, including the railroad land and even sections just the same. If he had stock now, they could not do that. They would have to have a different system now because they would have to eat the brush which has grown in there. It has been protected and has crowded the grass out and many stock could not live in there, but it could still be used for stock to a certain extent. The brush has grown up on this land and it was formerly burned off. The farmers and stock men used to burn the brush out all they could to keep it down so they would get good pasturage. They did not kill any timber there. The stock men would burn off this land and clear off the under brush and in that way would get fairly good grazing and free pasture. He owned that place down below and made about as much on the ranch as he did on the stock. These small ranchers that had homesteads

away back all had to have some stock, and that was a part of the proposition to make a living and was a part of the problem with him. They had to have stock to range out to make their living.

Whereupon witness, upon redirect examination, testified that the upland and land away from the stream higher up is good for fruit raising, as far as he has seen it tried, fruit does first rate. Fruit raising had been tried on these hill lands and he has seen fruit growing.

Q. What effect, if any, has the withdrawal of these lands from sale and the failure to sell to actual settlers—what effect if any has that on the schools and the ability of people to obtain schools for their children?

A. Why, their being isolated, they cannot have the facilities of schools as they can where it is thickly settled, on account of those alternate sections laying around, a man being on one and the other not being settled, I would judge.

Q. Mr. Hays, please describe if you can the lands as they have been settled up in this country; that is, what lands were taken first and what lands have been taken up gradually—the character of them.

A. The first locations that were made there were in the openest places, in the low land; and then as they go ahead they keep going up, working higher up in the hills, working up on the upper land, gradually going up as it passes along. Now, I have noticed the last few years that where there have been roads opened out they

have settled all along these roads and cultivated all kinds of stuff—apples, peaches and all sorts of stuff right on this road; that it was settled up.

Q. The first land was taken up under the donation law?

A. Under the donation law, yes. The next was homestead and pre-emption.

Q. Have the settlements advanced into the timbered sections as years have passed?

A. Yes, they are going that way. They keep going and growing that way all the time.

Q. That is, the first settlers took the lands that were the easiest cleared, and the men who came later had to take lands that they would have to devote more work to putting in a state for cultivation?

A. Yes.

Whereupon J. W. KELSOE, called as a witness on behalf of complainant, being duly sworn, testified that he is twenty-eight years old, and resides five miles from Derby, in Jackson county, Oregon. Derby has a post-office and a little store. He is a rancher and stock raiser and lives on his homestead there, which he has had about two years—a little over two years, and which consists of one hundred and sixty acres and is described as the northwest quarter of section 2, township 34 south, range 1 east of Willamette Meridian. He has lived in Jackson county about twenty-eight years, practically all his life. He has not had a great deal of experience in farming

for himself but did quite a little farming for wages and has worked on a farm at intervals, half of the time for himself, the other half for other people—since he started to work on a farm when he was fourteen. He is acquainted with the soils, climatic conditions and farming business in Jackson county. Referring to Defendants' Exhibit 259, his homestead is located in township 34 south, range 1 east, and the town of Derby is marked on this map near the corners of sections 14 and 15, 22 and 23. He is acquainted from Derby to Big Butte, taking two or three miles on the northeast of Big Butte and along Big Butte from the mouth of it, in around Butte Falls and also a strip on this side of Big Butte. He is acquainted with the lands five miles east of Derby and about five miles north of Derby. He is not acquainted northwest of the town of Trail, excepting to the Rogue River and a very little south of Derby, just along the road, there is a road that runs in there and he has been across it in a couple of miles. He is acquainted very little on the west of Derby. He has worked farming in sections 14, 2 and 3, and 23, in township 34 south, range 1 east, where they raise berries, hay, fruit, apples, wheat and oats. Wheat and oats are the main crops, it is not threshed, it is grain hay, used as hay. They raise corn and vegetables in these places where he has worked, such as potatoes, cabbage, carrots, rutabagas, and turnips. There are settlers in that township besides himself. The even numbered sections are nearly all settled up. There are quite a few of the odd numbered sections which are settled, pieces out of them

are settled. The remaining unsold railroad lands in that area with which he is acquainted will average about with the even sections and is about the same kind of land. The unsold lands of the company, the lands that have not been settled upon, that have not been purchased from the railroad company, would average approximately half that could be cultivated and crops raised on them—that is, 50 per cent of that land could be cultivated, and he thinks that 50 per cent or half of a one hundred sixty acre tract would be sufficient for a man who is an actual settler to maintain himself and family on. The other half of the land would be suitable for pasture for sheep, goats, hogs.

Q. What effect, Mr. Kelsoe, has the failure of the railroad company to comply with the conditions of the grant and sell this land to actual settlers at $2.50 an acre, in tracts of 160 acres, had upon the development of the country that you are acquainted with there.

A. It has been a detriment in roads and schools is the main thing.

Q. Has it retarded settlement?

A. Yes, sir.

Whereupon, upon cross-examination, witness testified, that his homestead is the northwest quarter of section 2, township 34 south, range 1 east, about five miles northeast from Derby, which is not a town but has a postoffice and a little store, but he could not tell how long it had been a postoffice and little store. He has resided there seven years and

it was a postoffice when he went there and there has been a store built there. The store was erected about three years ago. Leeds is a farmhouse and post-office close to the Rogue River, about twenty miles up Rogue River from Eagle Point, something like that. At Trail there is a postoffice and little store combined, and there was a livery stable and kind of hotel there, he thinks. He is not so well acquainted at Trail, although he has been there. Derby is on the Big Butte and Eagle Point on Little Butte. The section in which his homestead is located, is not on the head of any stream or creek and there is no stream or creek running through that section. His homestead is not timber land but is covered with brush and timber. What he means by timber is, that it is not covered with saw timber—it is wood timber. He would term wood timber oak and scrub timber. He has about a quarter of an acre cleared on his homestead. He lives on his homestead with his wife. He has no fence on his homestead. Moved there a little over two years ago and lived there continuously, excepting the time that he was off. There is a piece of land in section 23 which he spoke about farming, and he has been at his father's place during the time he was putting that in. His father's place is in section 14, about two and a half miles from his place. Most of the time he took his wife with him when he was farming that place. There is a house, barn, sheep corral and well on his homestead. His house is sixteen by twenty-four with a four foot addition built on one side, and then cut through so that the four foot addition is all under one

roof, and he built a bedroom. It is a three room house, sawed material, which he obtained from the mill that used to be on the top of the mountain. That is a timbered country above where he is. He did not take a timber quarter for the simple reason that the timber was higher up than he wanted to go. The Government timber was about all owned at the time that he had taken his homestead—the quarter sections that had been public land had nearly all been taken, it was not occupied but was held by owners as timber claims. Most of them entered this under the timber and stone act. Some of it had been homesteaded but the largest part of that country was entered under the timber and stone act. He supposes they took it for the timber, as it is pretty fair timber. These homestead people up there who took timber lands did not, to his knowledge, sell out when they got title. He knew of no abandoned homestead cabins up there in that best timber, where the cabin has gone to wreck and the land has passed to timber companies or timber investors, except that he now recalls two. He recalls two of these abandoned cabins and does not recollect more than the two that he knows have been abandoned. He could not say how many settlers there are in township 34 south, range 1 east, outside of the postoffice and the people who live at and run the postoffice. It is what he would term a pretty thickly settled country for a mountain township. Right around in that country, most of the mountain townships have many people in them and have good schools. There are two schools that he knows of in that township, one of

them has something like ten or twelve children and the other one there had eight on the list. They have six months in their school year, supported by a two mill tax last year. He couldn't tell if the tax is levied on all the land in the school district as he is not posted in school laws enough to know. He does not pay any taxes on his land because it is a homestead, but everyone who has a title has to pay taxes and he supposes the railroad is included. They have good summer roads in that township, but mud in the winter. Some places are worse than others. Some places in that country would mire a saddle blanket. He has been through the Willamette Valley, up about Eugene, in the winter time with pack horses and the roads are very bad. He has counted thirteen settlers that he knows of in that township where his homestead is situated. There are families in there with whom he is not acquainted. Three of them he would say live on the stream of Big Butte, and three at the postoffice and store. He does not know of any forest rangers of the United States living in there, but knows that some of these forest rangers do live out towards the forest reserve. He has run stock on the outside range up towards the mountains east of him, and it is quite a common way to turn the stock loose and let them go in the summer months. There are quite a few cattle ranged up in that country that belong to these ranchers and others down in the valley farther. There are not so many north of him in the summer that would get to the Rogue River, but there are some northeast of him and about something like three hundred to five hundred

head of cattle range in there that really don't belong there. The main cattle man in that country is Nichols. Most of these ranchers that he speaks of in this township and others, have a few head of cattle that they turn loose on the summer range. To make a living he has sheep, wool, hogs and cattle to sell. He sold twenty mutton sheep before he came down to Portland. His sheep range along the Big Butte on the commons. He got a boy from the Aid Society in Portland who generally goes out and brings his sheep in at nights and looks through them once or twice a day. He has never sold any beef cattle. He bought a bunch of cattle, and pretty nearly all the cattle he has sold have been yearlings. He sold out the cattle business. He sells his hogs at Central Point and Medford. Medford is about thirty miles away and Central Point twenty-five miles, and Eagle Point fourteen miles. Eagle Point is where he has always hauled his stock from. He generally rounded up at his father's place. The place of witness is sixteen miles and a half from Eagle Point, which is quite a little trading point on the Pacific & Eastern Railroad, which has been there for about two years. Eagle Point is on Little Butte, just before it empties into the Rogue River, and he expects Eagle Point had been settled before he was born. Eagle Point is a place of something like one hundred fifty to two hundred inhabitants. He does not know whether donation land claims were taken around Eagle Point, that was before his time, when he came there that country was settled up.

Q. You say fifty per cent of these lands could be

cultivated. You mean if the brush or whatever there is was cleared? You mean the soil is good enough and the ground is sufficiently level that it could be cultivated?

A. No, not necessarily. It is level enough to cultivate, I think, yes. I think it would have fifty per cent, that much, now.

Q. You mean if the brush was cleared?

A. Yes, sure.

Whereupon witness testified, that he cleared a quarter of an acre last year to see what it would do, after the farming season was over. They told him the land was too dry to raise anything. He cleared that for an experiment and raised wheat. He let the stock eat it. He put it in and let it come to a head to see what it would raise. He has not raised any vegetables. He has not lived on the place in there he was farming near his father's place. His father was on his farm and what time he was farming he was at his father's place. Most of the time during the two years he had been back and forth to his homestead. It was not his intention merely to comply with the law by being on the place only every six months and doing a little improvement. His stuff had all been at his home and it had been his home when he was not at work. He was away from home most of the time at work. He did not go away from home necessarily to make a living. He expects he could have made as good a living, probably better, if he had stayed at home—he don't know why he did not stay at home,

except that he needed the crops that he was raising on this other place. He didn't have his place cleared and he would have to make something while he was getting ready to improve his place. He has one child of his own, and also a little boy from the Aid Society. The boy goes to school but his girl is not old enough to go. His family is not at present on the homestead. They came to Central Point with him when he came down to Portland as witness in this case and his wife is there waiting for him, but they have not moved away. He did not take a timber quarter up there because he was not looking for timber. He wanted the land for a home. He does not know that he could or could not have gotten a good timber quarter if he had wanted to, he never posted himself on the timber back there, he never paid any attention to it, never looked to see whether any of these railroad quarters had good timber on them—never paid much attention to timber at that time.

Whereupon, upon redirect examination, witness testified, that this homestead of his, contains no timber of any value except for fuel, that is about all. There is some timber that would do for fencing and probably little improvements. It would not pay him to mill it, but if he had a mill of his own, it would probably pay him to cut it for fence and improvements. He has forty-one head of goats that have ranged most of the time since he has had them on railroad section 3 out on Butte. He does not range them on his homestead, only turns them loose and watches them awhile and drives them back. He has a little piece fenced in on the railroad land and

he keeps them confined. Goats are a great deal of assistance in cleaning off the land, by eating the brush out, killing the brush off, opening it up on the brush land. His purpose when he took this homestead was to make a home out of it and that is what he intends to do with it. There is a spring above the house about a quarter of a mile that he intends, as soon as he can, to pipe down there to irrigate his garden and berry patch. There is a man living right by the side of him, and he and this man had been talking about going in together and building a ditch for about six miles out of Clear Creek, and they went over and surveyed the ditch but they haven't thoroughly decided whether they will do it or not. He intends to clear up enough of his land so that he can make a living from it. Oak timber is hard to clear and it will be slow to clear, and he intends to clear it as fast as he can. The character of the land his father lives on, is mostly black, sticky and brush, and the character of the land is good as to its productiveness. He raised on his father's place, garden and vegetables and hay. The main crop is hay, about all. They just raise garden enough for themselves and what hay they need. He would think that the less schools they would have in that section, the less the railroad land would be taxed—if the railroad pays the taxes levied on its land. The wheat that he raised on his land grew good. He measured it and it was about four feet high. It headed out good heads four inches in length and the grains seemed to be full.

Whereupon, upon recross examination, witness tes-

tified, that this grain he raised was on that quarter of an acre. He did not cut it at all but turned the horses in and let them pasture it off. It was just a little patch, in a circle—and it would be hard to guess at the size of it, he estimated it as something like a quarter of an acre. It was below his barn. The buildings and barn were on the same forty acres with the clearing. He has this clearing in one place and his buildings in another place. It is about a hundred and fifty yards from his house down to the clearing, he did not want to farm the land right in his yard, he wanted to put that into berries or something, in fact he had set it in berries. He has nothing fenced excepting that little piece, and that only with a brush fence, he has a little wire fence around his house, the yard is fenced in around the house. The quarter of an acre that is cleared is fenced with brush fence. He pulled the brush off the trees and threw them around for a fence and sowed this wheat in there to see whether it would produce. He had been told it was too dry there to produce.

Whereupon W. A. BOGARD, called as a witness on behalf of complainant, being duly sworn, testified, that he is twenty-six years old, resides at Roseburg, Douglas County, Oregon, and was born in that county in what is known as Sutherland Valley, on a farm. He lived on a farm with his father until he was sixteen years old and he has been on a farm off and on since, his father resides on a farm there now. He has not farmed any since that time—that is, to go out in the fields and actually farm, but he has been out there every month on

the farm and he thinks he is acquainted with farming and farming conditions generally in Douglas County. His father first had a forty-acre homestead there, and then afterwards bought a hundred and sixty acres adjoining that. The homestead of his father was about 50 per cent of it agricultural land, may be more, something like about twenty-five acres of the forty he cultivated. Of the hundred and sixty that he bought later on while he was there with him, he would guess that his father had something like about forty acres that he cultivated and could have cultivated more. The balance was good pasture land and was a sandy soil, some of it was rolling. It was all good pasture land and more of it could have been farmed. Part of it was timber and slashed off. In fact, the entire forty that his father homesteaded was all timber and that was slashed, and then something like forty acres of the hundred and sixty was slashed. Clearing was required for that place, and his father certainly made a living from the land that he farmed. His father had a family of five children. The present business of witness is that of a timber cruiser and he has been engaged in that occupation during the last seven years—that is in the timber business. He milled one year, 1907, and he has been in the business for seven years. He has worked pretty much over Douglas County. There are some parts of Douglas County with which he is not so well acquainted, but along west of the railroad and some of the northern part of Jackson County, he has been over considerably. In his business, he located some homesteads, and he is in the real

estate business at the present time. As a timber cruiser, a man generally examines the timber lands and the soil, and the possibilities of taking the timber off, and what the land would be fit for when the timber is removed, and the expense of clearing also. He takes notice of all these facts in cruising lands, and would make a thorough examination of the land as well as the cruising and the possibilities. Referring to Defendant's Exhibit 259, he can give the townships and ranges in which are the unsold portions of the railroad lands with which he is acquainted and over which he has been. Starting in at township 22-6 south, ranges 7, 8 and 9 west, he has been over that a great many times. In fact, over the entire Smith River country. That is where he learned his business, with the Smith-Powers Company. He was going to include that down to township 25, which is practically the same, and then the ranges beginning at range 5 and running to range 9 west, all west. He is not acquainted east of the meridian. Beginning at township 26-2, and all down the line, all the way down the line till one gets down to township 28, he is acquainted, but he is not much acquainted in township 29. Township 26-3 is the farthest north. He has been very little through township 23-4 west, but he has been in township 23 south of ranges 5, 6, 7, 8 and 9 west, through that country a good many times. In fact, through the entire country there. He does not know but what he is as well acquainted with one part of it as with another, excepting a few points, as he stated, in township 29-2 and in down to township 32 he is not so well acquainted. The

farthest north of these lands with which he is acquainted is about township 22. He has been over a good portion of that township a great many times, beginning at ranges 4 to 9 west.

Q. Well, now, what is the character of that land as to its agricultural possibilities, possibilities of settlers going in there on 160 acres of land, and settling there, and making a living on the lands, as to the railroad lands indicated there on the map by the green?

A. In my experience and examination of the land I find about 85 per cent of it would be agricultural land, and I judge 95 per cent would be agricultural and grazing lands.

Whereupon witness testified, that some of the timber on that land is pretty good timber, and part of it is not. Ranges 8 and 9 in there are very good timber. The timber varies, it is not all solid all over. There is not a township in there that is solid timber all over. His estimate is based upon the clearing of the land, and all his estimates are based upon putting the land in cultivation. There are some places where a man could get some land that is clear. Of course, further back and in the mountains there would be less. There are townships there with a good many sections that the land could be cleared very easily, and some of it is prairie land, that is on railroad lands. What scattering land there is, in townships 28 and 29, quite a bit of that is open land. He is acquainted in township 28 from ranges 4 to 9 west, and they are practically the same as those he has described

in township 22; very little difference in township 23, if anything, a little better—more of the land is open, especially ranges 8 and 9, that is very good land and the timber is about the same, very little difference in general. He is acquainted in township 24 from range 2 to 9 or 10 west, and the agricultural possibilities of the railroad sections are about the same, as those described in reference to townships 22 and 23, he would think they were not quite as good in a portion of it—very little difference. He does not know but what they are about the same there in township 24—very little difference. He is acquainted in township 25 south, ranges 2 to 9 or 10 west, and a portion of these railroad sections, compared with the others, is better. Take it as a whole, they would average about the same, but he would state that township 25, range 8, is tolerably rough—that is, township 25 is rougher, but there is a burn and not much timber in there. It is a large burn, one of the largest burned areas in that district is in that township. That burn covers three or four sections, at least, in one solid burn, and then there is a strip of timber and other burned areas on and on all through the township—half of it is burned. He is acquainted with the railroad lands in township 26, running from ranges 3 west to ranges 10 or 11, and it is about the same as the railroad land and other outstanding land—practically about the same as the other. He is acquainted in township 27, beginning with range 3 to range 10, and the agricultural possibilities of those lands are very good. The township in ranges 3 and 4 is very good land. Then they are more

abrupt towards the coast and more timber. The soil is good, most all the land the soil is practically good on that, only it is not so level. This territory consists of a good many areas of bench lands and flats in 1 and 2 west. He is well acquainted in township 28 south, beginning with range 4 west, that is in the wagon road grant, and there is very little railroad land in that excepting in ranges 4 and 5. The railroad land in that township is very good—that is all good land in there and he thinks there is more agricultural land and less timber land as compared with these other lands he has mentioned—quite a portion of the railroad land in township 28, range 5, is better land. There is a good deal of prairie land. This is about eleven or twelve miles from Roseburg, which is a city of about 6000 population. He is acquainted with the railroad lands in township 29-4 to ranges 13 or 14. A part of these lands are very good for agricultural possibilities. The townships over near the coast, in ranges 11 and 12, are better than the balance. The other lands are about in proportion with the lands in Douglas County. He does not know whether ranges 11 and 12, township 29, are outside of the grant. About 65 per cent to 70 per cent of ranges 11 and 12, township 29, could be cultivated and the balance would be good grazing land. It is all good soil in there, low rolling hills. He is acquainted with township 30, range 4 to range 13, of these railroad lands marked in green on Defendants' Exhibit 259. There is a variation in these townships, at the coast. There is very little difference in all of that, that is east of the

railroad, that is practically the same—the water sheds and the land—excepting township 27, which is better than the balance of it. From township 30 south, ranges 11, 12 and 13 west, he does not know whether the grant takes in that or not. that is a good deal like the townships he has described above. There would be 65 per cent or 70 per cent of it good grazing or could be cultivated. The land in ranges 11 and 12 west is rolling land, low hills, and benches and flats, none of it is steep or rough to speak of, and does not rise like some of the other land. Beginning with township 31, ranges 5 to 13 west, he would like to class that with the balance of it. Beginning with range 10 to 13, it would be about 65 per cent agricultural land in township 31. He is acquainted with township 32, ranges 4 to 9 west, inclusive, and 30 per cent of these lands could be cultivated. He is acquainted with township 33, ranges 4 to 7, inclusive, and 30 per cent of these lands could be cultivated. He is acquainted with township 34, ranges 5, 6 and 7 west, and the railroad lands in that township and those ranges are pretty fair, the most of it—perhaps 45 per cent of it would be agricultural land. He is acquainted with township 35 south, ranges 5, 6 and 7 west, and he does not believe they are quite as good as the lands in township 34 south, ranges 5, 6 and 7 west. Township 35 south, range 7 west, is pretty fair, there is about 35 per cent could be cultivated. He has been through the other ranges in this township from time to time, but would not care to pick them up because there are others there that he knows better. He is acquainted with the other

townships south of there, but not very much, he has been through there a great many times but is not as well acquainted with them as he is with others, he has been through there generally and has cruised in there a good many times, but these townships here and there, and pieces here and there—he has made a trip on Evans Creek in township 34 a good many times, but then not generally speaking of the country. He is not particularly acquainted with the character of the lands in ranges 1 west to 4 west, in the township that he stated he was acquainted. He has been through them, but then these that he has named he has been over a great many times and he would not care to pick up those he is not particularly acquainted with. These percentages, in his estimate, would hold good if the lands were divided into one hundred and sixty acre tracts by contiguous forty-acre subdivisions, and in his opinion that much land would be sufficient to support a man and his family, taking this land up for farming purposes. If one gets twenty acres of agricultural land on one hundred and sixty and the balance is any good at all, he can support a family.

Q. What would you say as to the availability of these lands in their present condition for settlement in 160-acre tracts, by actual settlers, for the purpose of going on the land and making a home there, farming, going into the farming business?

A. Why, I think they would be all right. I don't see any reason why a settler could not obtain a home and maintain his family there.

Q. I am speaking now, Mr. Bogard, in their present condition. Have settlers gone onto lands similar to this and cleared it up and made farms out of it?

A. Yes, sir; certainly. Certainly, practically everything was taken.

Q. Has that been of frequent occurrence or rare?

A. No, very frequent. There are a great many people through every day looking for such land.

Q. For what purpose?

A. For unimproved land or public land, for small homes. What I mean is, men with little means.

Q. Mr. Bogard, are there many people who have gone onto lands that contain timber in this area that you are acquainted with, cleared up the lands and made farms of them—homes?

A. Yes, sir.

Q. In small tracts, 160 acres, or, as your father did, on forty acres?

A. Yes, sir.

Whereupon witness testified, that in his work as a timber cruiser, he ran the lines and became familiar with the various parcels of land. He did a good deal of that work for different people. He has come across settlers in the hills there or on the benches, and in these even numbered sections near the railroad lands, he found them settled all over the country. These lands are adapted to fruit raising and he knows they are good for that purpose because he has seen fruit growing on sim-

ilar lands. He found on these or similar lands, grains of all kinds and vegetables.

Q. Mr. Bogard, in your opinion what has been the effect of the railroad company's failure to sell the lands in this grant in tracts of 160-acres to actual settlers at $2.50 an acre, in compliance with the conditions of the grant.

A. Well, it has been a detriment to the country. It has kept out schools and roads, kept out business in the towns, owing to the fact that they don't get the market for produce that might be grown on this similar land. It has held the country back in every way that settlement could, or non-settlement.

Q. That is brought about by keeping out settlers?

A. Yes, sir.

Q. Now, Mr. Bogard, from your knowledge of this country, please state how the development has taken place as to the lands that have been first taken up by the people who went in there some years ago, and as to the lands that have gradually come under cultivation and settlement.

A. Well, of course all I know about the land that was taken up is what I get from the records, some of it, before my time; but first the donation claims, and they followed along the river, on the bottom land, or along the military wagon road. That was one view possibly in locating there. And then came the homesteaders, pre-emptions, and they worked on from time to time

until they have taken all the public lands.

Whereupon witness testified, that the bench land or hill land there has been put into cultivation or clearing, homes are built all through the mountains. The first lands taken were those that were easiest put under cultivation. The settlements and cultivation have gradually extended further out from the streams and up into the hills and into the more timbered sections, and have extended clear through, from the river to the coast. There has been an increase in the demand for settlement lands by people who are seeking homes to engage in the farming business. There has been a great demand for lands and the demand has increased in recent years, in the last six years. He knows of some people that have attempted to buy this railroad land, and knows of settlers that are on it now and are making a home on it.

Whereupon, upon cross-examination, witness testified, that his father's homestead is in section 12, township 25 south, range 5 west, about sixteen or seventeen miles from Roseburg north, and five miles from Oakland southeast, and about five miles from the railroad. His father is not residing there now, having sold the place about five years ago. He had 200 acres of which 160 acres was a homestead. He cannot tell how long ago it was taken, but it was taken before they settled in there, a good while ago. He is twenty-six years old past, and this homestead must have been taken in the early settlement of the country. It was taken, he would say, thirty years ago. There are quite a good many do-

nation land claims along the rivers in Douglas County. Roseburg is the county seat of Douglas County and is a town of about 6000 inhabitants, situated on the railroad, and the country around Oakland is an old settled country. His father did not take up a claim under the timber and stone act, but witness got a quarter section under the timber and stone act in Curry County in section 28, township 35, range 14 west, which he took four years ago for the timber that was on it. There have been quite a good many entries taken under the timber and stone act in Douglas County. It is pretty hard to say whether there were more quarter sections taken under the timber and stone act of these timber lands than under the homestead act. He does not know as there has been a great deal of difference. He would judge there would be about half and half—that is, he thinks that of the timber lands of Douglas County, so far as he knows from his knowledge and acquaintance with the records and with the lands themselves, about one-half of the number of timber claims have been taken under the timber and stone act, and the other half under the homestead act. In going over Douglas County and these various townships of which he speaks, he was part of the time in the employ of timber people, cruising part of the time. When he first began he was with the Gardiner Mill Company, located at Gardiner, on the coast, at the mouth of the Umpqua River. He then worked some with the cruisers of C. A. Smith, with his cruising parties, something like five or six months, and worked with the Gardiner Mill Company off and on for four

years. They had a lot of land that they bought, ranches and timber lands and all. They bought off the timber of some of them, and some places they bought the timber, ranch, farm and all; some places they bought stumpage, and in other places they bought the title. As a rule, these timber people did not buy the title—they have up to late years but the last year or so they are not buying as many titles. If a man has a sawmill, he will buy stumpage somestimes, but when he has not a sawmill and wants to buy timber, he will buy the title if he can get it. He has cruised, he expects, for a thousand different individuals and would not undertake to name them here. He could name a good many different people. He has not followed the business of locating people on timber quarters very extensively in Douglas County, most of them were taken before he went into the timber business. He has cruised for probably a thousand individuals and has located some of these people. He does not know how many he has located on timber claims since he has been cruising, but has located a few—probably thirty or forty. The timber cruisers for individuals do not charge so much for finding the quarter that has good timber on it and then go out and ascertain or cruise the amount of timber and then bring the buyer and seller together. Most of his locating has been down in Curry County and northern California, in townships 40 and 41, ranges 13 and 14 west, and on up the coast. He cruised for these individuals simply because he was in the business. They wrote out here for someone to cruise a quarter of timber or a piece of land

they had bought. They had land cruised to ascertain how much timber there is on it, to know the character of the land and how much it might be worth. They like to know about how much timber there is on it, as they might want to sell it, mill it off or clear it off. They cruise to find out the stand of saw timber there is on the quarter, if it is a timber quarter they have and are handling it for the timber, buying it for the timber, selling it for the timber, but this is not always the case in cruising, the main purpose of cruising is to ascertain the amount of timber there is on a quarter section. He cruises what timber there is on it, what he actually thinks it would saw out, to the best of his knowledge. It doesn't make any difference whether his cruising is for the buyer or seller. He has been at this business for the last four years in Douglas County and has made a living at it. He does not know about how many million feet of saw timber he has cruised in the last four years, but a good deal. Seven or eight million feet is a good stand of timber to a quarter section and the best that he has cruised. The average stand of timber per quarter section in Douglas County is about two million feet, and such a timber quarter with two million feet is not very saleable, but is considered merchantable—it could be sold. The best price that he had known people to pay for timber quarters in Douglas County is four thousand dollars. In his travels through this timber belt, there is an old cabin here and there, occasionally one on land that has been homesteaded, that has been abandoned. These timber claims are all the way up to the summit of the

Coast Range. The Government lands are practically all taken in Douglas County, here and there a quarter—very scarce. He does not think that Douglas County has some of the best timber in western Oregon, the best timber, in his judgment, is in Coos County, adjoining Douglas County. Douglas and Lane counties are both considered good timbered counties, and there is pretty fair timber in them, but they are not the best. Speaking of agricultural land, he means that after the timber is removed these lands would be agricultural to the per cent that he has stated, in his judgment. There has not been a great deal of demand in the last three or four years for timber in Douglas County. The demand was greatest, within his knowledge, about seven years ago, and began to be active about 1902. Before that time he does not know whether the timber in Douglas County was considered worth much or not, or worth anything. He doesn't remember before that time, he was not in business and does not recollect. Before timber became of commercial value, in clearing the land they did not try to save much timber until there were some fire restrictions. He did not know who caused them, but there were fires. Until timber was worth something, if they did any clearing they burned it up and they are doing it today. In a great many places, they are burning up good saw timber today. They are burning up timber to clear up the land. They are clearing up some of these good timbered quarters. Those that are living on there today are burning the timber, clearing it down and logging it together and burning it. They have all

the way from three to fifteen or twenty acres cleared on some of these timbered quarters. They slash the timber down, aim to haul it as near together as they can, and then burn it. They slash saw timber from three to six feet at the bottom or butt of the tree, if it happens to be near where they are improving. They are working right on through, he does not think they are saving the timber. They leave no timber standing. Some places they leave here and there a tree, but mostly they are clearing it, they generally start in on the brush land or where there is less timber, generally start in where there is no heavy saw timber—naturally would do this. He does not know whether they leave the saw timber until they have cut the other down, but they are clearing it, logging it off, he knows a good many cases where they are taking it off. These clearings he speaks of are from three to fifteen acres, and some of them have as high as forty acres, they have not cleared that, because it has been on a burn or something of that kind, some of them that have more land cleared, have taken advantage of an old burn. His business is that of timber cruiser and real estate, and his partner is Finis Dillard. He does not know of a timberman down there who has located four or five thousand people on these railroad lands, or who induced a lot of people to file applications, or tender applications to purchase this land at two dollars and a half an acre, and then got them to intervene in this suit. He is not personally acquainted with a man named Leavengood at Myrtle Creek, but knows of his operations down there, but does not know

that he induced three or four thousand people in Douglas County, and who lived abroad, to come in there and make application to purchase these timber lands. He never saw any of them on the land, never saw him or saw him going out with any of them. He does not know of any of those applicants having applied for valuable timber quarters in Douglas County, and he never cruised any of these lands for these so-called applicants, nor applied for a timber quarter himself. The land was off the market before he knew anything about it. He never applied under this act of Congress that they are trying to enforce here or declare a forteiture under. He took a homestead in section 26, township 22 south, range 4 west, about thirty miles north from Roseburg on Elk Creek, a tributary of the North Umpqua. It had about three million feet of timber, most of it on an eighty. He took it about a year ago and then relinquished it for $925.00, and the man to whom he relinquished it filed on it and is still there. There was about three million feet of timber on the hundred and sixty acres. The man that he relinquished to is a single man and is making improvements on it. He is putting in cultivation about fifteen acres, or will have in the spring. This land is up on the bench, up on the side of the mountain. The man is clearing it himself, some small brush on it, perhaps half a dozen trees on this fifteen acres. He felled several trees of saw timber there. He doesn't know whether the man can sell his timber if he gets his title, he might. The stumpage in that country out there is worth about sixty-five cents, taking large tracts. There

are no large timber holdings in Douglas County that he knows of, that he had anything to do with. He never cruised any of these large timber holdings out there.

Whereupon, upon redirect examination, witness testified, that that land in this general area with which he was acquainted was originally, judging from the present state of it, covered with more or less growth of timber. There is timber scattered here and there of different kinds on most all of the lands, excepting the river bottom land. The river bottom land would cover just about the area that was taken with donation claims, that is about on an average. Of course, there were some donation claims that ran up on the hill to take in timber, but that would be just about an estimate. There is a wagon road grant in Douglas County, running from Roseburg to the coast, the Coos Bay Military Wagon Road, and covers practically township 28. He does not know just how wide that grant was, but something like six or eight miles, he observes the yellow marking through Defendants' Exhibit 259. It is principally in townships 28 and 29 from range 6 to the end of the grant, and he notices the marking "Coos Bay Military Wagon Road." Most all of the people that filed on timber and stone claims were non-residents of the state. The original applicants were 90 per cent of them non-residents of the state. A good many scrip locations have been made in Douglas County, but not as much as in some of the other counties, he thinks not as much as in Coos County. Those who purchased under the timber and stone act were mere speculators in timber. There

has been a change in recent years, as the values of land have increased, in the purchasing, or rather in the selling of timber. Generally if a party has a timber claim, he wants to know what the value of the land is and if there is a portion of it that can be reserved for good farming, without too much timber on it. That has occurred in the last three or four years. In the last five years, land in that section of the country with which he is acquainted has gone from twenty dollars an acre to two hundred dollars an acre, and on up close to five hundred dollars; but the land in the raw state has gone from twenty to two hundred dollars an acre. The timber has not increased in value in the last five years. In fact, one cannot get as much for timber now as he could five years ago. The average stand of timber on these lands with which he is acquainted would be about two million feet, taking the timber land, land that has timber on it, on an average, to a quarter section. Four million feet is a very good claim in through that country. There are breaks in the timber by reason of lack of growth of timber or burns. There are very few sections that are all covered with timber, very few quarters that are all covered. There are either four or five acres to the quarter that are open, sometimes more of course, but take it on the timber claims there are very few sections that are entirely covered with timber. In recent years there has come up small brush, such as hazel and arrow wood, on the open places. Eighty acres of his homestead was timber. The rest of it was scattering trees, but all fair land. There is not an acre of rock

land on it. There is probably thirty five or forty acres, at least that much, of it that can be cultivated. The man who purchased this land from him is using it as a home and is staying right there and improving it, and makes his living on that place. He has been on there less than a year, he has not raised a crop, but then he is preparing to put in a good crop this coming spring.

Whereupon, upon recross examination, witness testified, that there was about three million feet on this eighty acres of his homestead. There was about forty thousand feet to the acre, eighty acres of that. If the whole quarter section had been as good as the eighty, there would be about six million feet on the quarter, but it is like most of them, the timber is in patches. The value of these unsold lands on an average, through where he has traveled and over which he has gone and with which he is acquainted, in his judgment, taking into account the timber and soil and everything that enters into the value of a piece of land, would be from fifteen to twenty dollars an acre, possibly twenty-five—some of it—take it on an average. There is a portion of these quarter sections of unsold railroad land that is worth as much as a hundred dollars an acre. It is the land as land that gives them that high value at the present time. He means that he could sell some of these quarter sections for a hundred dollars an acre that is not covered with timber. There are forties of these quarter sections which are not covered with timber, that he could sell for one hundred dollars an acre. He does not suppose one could find a quarter section right through that

one could sell for one hundred dollars an acre, but thinks one will find portions of them that can be sold for a hundred dollars an acre. There is a forty in township 28 south, range 5 west, about twelve miles from Roseburg, that one could sell for a hundred dollars an acre in its present state. That is creek bottom land. There is as much as two hundred acres of creek bottom land. That land is worth from two hundred to three hundred dollars an acre, and the land around it is old settled land, part of it under the donation claim. One can come down the Willamette Valley around Lane County and buy cleared land for from one hundred to a hundred and fifty dollars an acre; but one cannot buy much bottom land around Roseburg, out towards Myrtle Creek, for less than a hundred dollars an acre. One can buy some of that hill land for sixty, seventy or eighty dollars an acre, but there will be some brush on it. One would have to pay for land over about Myrtle Creek, around the railroad, up to two hundred or three hundred dollars an acre, that is where there is an orchard on it, some of it, and some of it has no orchard. A man doesn't like to cut off a portion of his place from the orchard and sell it. He thinks two or three hundred acres around Myrtle Creek would sell for two hundred or three hundred dollars an acre; it would, if it was in the bottom. Around Sutherland there is quite a valley, about a mile or two wide and eight miles long, that land is all cleared and level. He does not suppose there is as much as two hundred acres of it irrigated. A great deal of it is being put out in young trees from one to four

years old, and is being held and exploited by land companies, by Frank Waite, who has sold some of it as high as seven hundred dollars an acre. He is not acquainted with the land in the Rogue River Valley around Medford, but that Sutherland land is not like this railroad land, that is out in the mountains. There is some of this railroad land, he will say, that is better than that Sutherland land that they have in fruit there—but, take it as a whole, it is not. One will find a forty, some places a hundred acres on a quarter, that is better than the land of Frank Waite. Some of it has timber on it, some of it is not very heavy, some of it is quite heavily timbered. He does not want to create the impression, by his testimony, that the land in this grant is generally of the character of the land around Sutherland. This land is spotted all over, some of it black heavy soil, even better than that land. That is not good land around Sutherland. He thinks the grant all over would average in value, taking everything into consideration, as far as he knows, probably somewhere from fifteen to twenty dollars an acre. If a man could get a good quarter section of this timber land for two dollars and a half an acre, he does not think he could sell it for more than fifteen or twenty dollars an acre, if there was timber on it, to some timber company. He is sure he could not. If he wanted to sell it, perhaps he could sell it, there is a demand for land, that a man can sell any kind of land less than twenty dollars an acre any time. He does not know how much land he sold last year, but he thinks a couple of thousand acres. The title has passed. His

partner is Finis Dillard, and they operate a real estate business in Roseburg, and have no men working for them. He has only been in the real estate business the last seven months. He did not buy out a business that had been already established. He and his partner started up together; his partner had some few lists, but very few. Real estate has not been very active during the last year, rather quiet.

Whereupon, on redirect examination, witness testified, that if the railroad company had only a two dollar and a half interest in this land and is permitted to retain it at a value of fifteen to twenty dollars an acre, it would make the same profit that an individual would who would purchase the land at that price and sell it at fifteen or twenty dollars an acre. It is the fault of the company if they have paid taxes on it for thirty-five or forty years. The reason why this two hundred acres of railroad land near Roseburg remains unimproved is that the railroad company won't sell it. There are other small tracts in the same township that are equally good. These tracts are about eleven miles from Roseburg by wagon road, and less than that on a direct line.

Whereupon B. F. SHIELDS, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-six years old, resides at Roseburg, Douglas County, Oregon, and has lived in that county thirty-eight years. For the last ten years he has been a timber cruiser most of the time. A timber cruiser is supposed to go out and look claims over, estimate the timber, and see the character of the land, etc., and report as to the

character of the land, the amount of timber on it, and the agricultural value of the land—at least he does so. As a general rule, he estimates the agricultural value of the land before and after the timber is removed. He was raised on a farm in township 28 south, range 8 west, Douglas County, Oregon, about fourteen to sixteen miles west of Roseburg. This was his father's home of eighty acres of rolling land, partly timber—oak grubs. His farther was engaged in general mixed farming, and cultivated on his farm thirty to thirty-five acres. His father had a family of nine children. Witness took a homestead in section 30, township 25 south, range 2 west, and sold that to Frank E. Alley of Roseburg, who sold it later on. There is a fellow who has it rented, raising hay and stuff on it, using it for agricultural purposes. Witness filed on that claim April 1st, 1902, and sold it in 1907, he thinks it was. It has been used for farming purposes all the time. He had about ten or twelve acres cleared in one piece, and six or eight acres in another piece, and raised hay and garden stuff, potatoes, corn and vegetables of all kinds. He had a family. Hay and garden stuff are generally raised in that community; some fruit—but just for their own use, very little fruit. They raise corn there, and the hay is mostly oats, wheat and timothy. Referring to "Defendants' Exhibit 259," he is acquainted with these unsold railroad lands and the lands under contract, especially the unsold lands marked in green from township 21 south, ranges 7 and 8 west, located on Smith River, and in his opinion probably 35 to 40 or 45 per cent of township 21

south, ranges 7 and 8 west, of the unsold lands of the company could be utilized for tillage; and that in the next township (22), about 30 or 35 per cent would be suitable for plowing and tilling, and about 25 per cent of township 23 south, ranges 2, 3 and 4 west. He would think that in township 24 south, ranges 2 and 3 west, probably 35 per cent would be suitable for tilling and plowing. In 24 southwest, there is only part of that, about half, the south half, which runs up pretty high into the mountains, but it would do for grazing land. Township 25, ranges 1, 2 and 3 west, there would be about 35 per cent that could be tilled, and in township 26 south, ranges 1, 2 and 3 west, from 25 to 30 per cent could be rendered suitable for cultivation. Township 27 south varies. That township would vary from 25 to 35 per cent, somewhere in that neighborhood, that could be rendered suitable for cultivation. He is acquainted with ranges 2 and 3 mostly. In township 28 south, ranges 2, 3, 5 and 6 west, he is acquainted with the unsold lands of the company and they would run about the same as the others. It might be as one gets closer to the valley that it would run a little higher. In township 29 south, ranges 1, 2, 3 and 4 west, they would average about the same as the others. Of course, as one gets closer to the valleys, the percentage of land that could be rendered suitable for cultivation would run higher—further out it is not so high. He is acquainted with ranges 1, 2 and 3 in township 30 south, and it will average about the same as the others. In township 31 south, ranges 1, 2 and 3 west, he is acquainted, and the

lands in township 31 would range pretty well. It is pretty well open in township 31, there is a good deal of open land, probably 40 per cent of that in township 31, range 1 west. He is acquainted with some of the lands in township 32 south, ranges 1 and 2 west, and this would run from 25 to 30 or 35 per cent, somewhere in that neighborhood, as agricultural land. He is very little acquainted with any of the lands in township 33 south, and is but little acquainted with any of the lands south of that, in the grant. He has been through there. He is acquainted with the railroad lands on the west side of the railroad in township 25 south, ranges 8 and 9 west, some of that would run 40 per cent, while others would run about 30 per cent. He is not acquainted with any of the other townships on the west side of the railroad, to speak of. He thinks that the average that he has given would generally carry through as to one hundred and sixty acre tracts of railroad land, selected by forty-acre legal subdivisions, but not necessarily by quarter sections.

Q. What is your opinion as to whether tracts of land such as the railroad land is that you are acquainted with in this area as to being suitable for settlement purposes, for the purpose of a man going on the land with his family and making his home, engaging in farming, earning his living?

A. He can. He has got to first clear the land, of course, it takes a little means to start with.

Q. He would have to have something to start?

A. Yes, something to start with. Of course, he could go on there and work out part of the time, you know, and then part of the time on the place.

Q. Doesn't that same condition prevail as to any raw land that a man would go on?

A. Yes, sir; it does, if he hasn't got means.

Q. Are there settlements on lands of similar character to these unsold lands of the railroad company that you have been over?

A. There are, yes, sir.

Q. I mean by settlements, people actually living on the lands and farming them, making their living there?

A. Yes, sir.

Whereupon witness testified, that these people go in there and build homes and clear up the land. They have some stock, such as that, raise hay and garden stuff. These lands generally raise fruit in that area, most all kinds of vegetables, and most places they raise corn, wheat and oats. Away high in the mountains sometimes one cannot raise such as tomatoes, but they can raise most of the stuff. He has seen wheat, oats and timothy raised there, mostly grains, and apples, pears, prunes, peaches and cherries, potatoes, cabbage, carrots, squashes and rutabagas.

Q. In your opinion, Mr. Shields, what has been the effect of the railroad company's failure to comply with the conditions of the grant, failing to sell this land to

actual settlers at $2.50 an acre, in tracts of 160 acres?

Mr. Fenton: Objected to as assuming that the railroad company has failed to comply with the terms of the grant.

Q. That is, the effect upon the community.

A. Well, it has been tending to hold the people back and keep out schools, and the building of wagon roads.

Q. Has it affected the settlement of the country in any way?

A. It has.

Q. Materially or not?

A. Materially; yes, sir.

Q. Now, Mr. Shields, there have been some questions asked in this case, and some testimony relating to the manner in which the lands have been taken up in the areas covered by this grant, or in part of the area covered by this grant, that is, of homesteads and timber and stone claims. Now, will you please tell what your experience has been with reference to the people who have taken up homesteads in this country—this general country?

A. Why, in what way? What do you mean? In what way?

Q. Have people generally abandoned their homesteads?

A. Why, no; not as a general thing they don't.

Whereupon witness testified, that no residence what-

ever was required for timber and stone entries, and he thinks most of the lands transferred by entrymen from the Government obtained their title under the timber and stone act. These people who filed on these timber and stone claims were principally from the East and Washington, the most that he knows anything about. They were from all over the eastern countries.

Whereupon, upon cross-examination, witness testified, that he is a timber cruiser by profession, and has been so practically the last ten years. He has not cruised for any timber company in Douglas County, but mostly for individuals. Timber first became an object of inquiry, as he remembers it, about seven or eight years ago, somewhere along there. In places, these lands with which he is acquainted, over which he has been, are considered fairly good timber lands. These unsold railroad lands, taking them on an average, would carry something like two million feet or a little better, not much more than that, take it as an average on the whole. When a claim carries two million feet of saw timber, it is considered an average timber claim for that country. The highest stand of timber on any quarter section which he has cruised or known of being cruised in Douglas County, would run to eight million feet—some of them ten million feet, and the value of such a claim that carries ten million feet to the quarter section depends upon the locality, etc. If it is on the coast where there are saw mills, probably one will get a dollar and a half to two dollars a thousand feet, but take it west of the railroad, if one can get fifty to seventy-five cents he would be

doing well. That would mean selling the land as well as the timber. They generally buy the land and all together, as a general thing. He has known of very few people who have taken homesteads, proven up on them either by communting or living the five years, and then selling the land to timber people.

Q. There are cases of that kind, though, all through this timber belt?

A. I suppose so.

He means that this per cent of agricultural land mentioned by him would be agricultural after the timber is removed or cleared up.

Whereupon, upon redirect examination, witness testified, that there has been an increase in the value of farming lands in the last five or six years in his vicinity. In the last four or five years there has not been much demand for timber, it has been about on a standstill. In fact, he does not believe one could sell it for as much now as one could four or five years ago.

Whereupon JAMES S. BAILEY, called as a witness on behalf of complainant, being duly sworn, testified, that he is forty-one years old, resides at Ashland, Jackson County, Oregon, was born in that county and has lived there most of the time. He was born in Rogue River Valley, township 38 south, range 1 west. His father was a farmer and rancher and farmed in different parts of Jackson County. He owned a farm in the Rogue River Valley for a while, farmed in different parts of that valley, and then in 1894 bought a ranch on

the Ashland-Klamath Falls road, twenty-four miles east of Ashland. It was what one would call a mountain ranch, consisting of one hundred and thirty-three acres. It was the northwest quarter of the northwest quarter of section 4, township 40 south, range 4 east, and the south half of the southwest quarter of section 33, in township 39 south, range 4 east. It was rolling land, some of it was rocky. There were small patches of good soil on the place, and perhaps out of one hundred and thirty-three acres there was thirty acres of what one would call good tillable soil; this hundred and thirty-three acres was all the farm that he had, and he farmed about thirty acres of it. His father earned a support for himself and family on that land, and had no other means of support. Section 33 was all railroad land excepting eighty acres that his father owned in that section, who had part of it fenced in, made application to the railroad company for it, but for some reason did not get it. He does not know the exact date of the application, but it was about 1888, and the company replied that it would send an appraiser out and appraise the value of that land, and the company put a price on it of seven dollars and a half an acre. At that time, the lands were selling around there at two dollars and a half an acre and his father felt that the company was holding him up a little, and he tried to see if there was not some way of what he called getting fair play. Later on his father offered the railroad company seven dollars and a half an acre, with the result that he could not get it because the land was withdrawn from the market. He

made this offer somewhere along in the 90's. It dragged along for quite a while before his father finally decided to pay seven dollars and a half an acre for it. This land that his father applied to purchase was agricultural land, fit for nothing only for farming purposes, and that was the use his father had in view, the only thing he wanted it for—for farming. Witness farmed quite a little in different parts of Jackson County. The first farming that he did for himself was on Emigrant Creek, about eleven miles east of Ashland, in townships 39 and 40, range 2 east. He farmed there for three years and then went to Klamath County on Spencer Creek, and was there for a year or two. He farmed the old Spencer ranch one year, and in 1899 he bought a place on Corral Creek on the Ashland-Klamath Falls road, twenty-two miles east of Ashland, consisting of a hundred and sixty acres in section 6, township 40 south, range 4 east. He farmed that for four years. There was not much land cleared on the place when he took hold of it. He cleared considerable, and in the four years that he had it, he added, he thinks, twenty acres to the agricultural part of it. That was a timbered tract, portions of it was heavy timber. He left his father's place down in township 40 south, range 4 east, in section 4, in 1890. He worked on his father's farm there continuously from the time his father bought the place until he left home. In his experience, not only the flats that exist along the rivers in Jackson County, but the high lands and hills and mountains there, will produce most anything one will plant, except lemons and

oranges. Apples do well, vegetables of all descriptions do well. From his personal experience, he knows that lots of the higher ground there will grow good timothy, any of it will grow good grains, good fruit—grow orchards, that is, to a certain elevation. The elevation where his father lived and where he lived, in what is called the Jenny Creek Basin, fruits do well there, such as apples, plums and pears. The altitude of Klamath Falls is forty-two hundred feet, and there is farming there at that altitude, where they raise alfalfa and grains of all descriptions, apples, potatoes and onions. They raise them for the market. He does not remember the exact elevation of his father's place in township 40 south, range 4 east, but thinks it was thirty-four hundred feet. His father raised everything in the way of grain, vegetables and hay. Vegetables do as well or better there than they do in the lower altitude. His father's farm was in what is known as the Jenny Creek country. It is known as the old Jenny Creek Station on the road between Ashland and Klamath Falls. It was the old stage station. He does not think his father ever kept the stage station there while he was there. It might have been used that way before his father went there, he could not say as to that. This land that his father bought was homesteaded by James Purvis. Referring to "Defendants' Exhibit 259," witness points out township 40 south, range 4 east, and states that Shake is the name of his postoffice, and that he is familiar with the country in general and is personally acquainted with all of it—that is, townships 38, 39, 40 and 41 south,

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ranges 1, 2, 3, 4, 5, 6, 7 and 8 east. Eight east is not within the limits of the grant, excepting as to a very small area. He has been pretty thoroughly all over these townships and the greater portion of it that is in the Government sections in particular, he has looked that out by tally in five-acre tracts. He had been there on different occasions. He located a good deal of country out in townships 38, 39 and 40, ranges 6, 7 and 8 east, and over in township 41, range 8 east, and then he has worked for different timber companies cruising through that country, all the timbered portions of it, and has been on practically every section of it, has been over it thoroughly in the even sections, and in some instances the odd sections. He notices the blue color shown on this map in townships 39 and 40 south, which indicate lands that have been deeded by the railroad company. He has been thoroughly over townships 38, 39, 40 and 41, ranges 6 and 7 east. He will start in east and come back on it—on 5 east, and in ranges 4 and 3 east. In 1 and 2 east, he has looked that over pretty carefully in different ways. When he lived in township 40, range 2 east, he lived there for three years and had stock on the range, and was over the range continually, and had looked over different sections in township 40 south, range 2 east for people. He was looking after them with a view of getting a homestead in that country. He has been in townships 38 and 39. In 3 east, he was never thoroughly all over except on the east side of 38 and 39 in 3 east. He was looking for timber in that country for different people. His first trip in

there was with a man by the name of Angell. He thinks Angell had something to do with the Hopkins estate. Angell came to that country with the Pierce Brothers and bought up lands for the Hopkins, and they were the ones that bought that tract for Hopkins in that country. Witness went up into townships 38 and 39, range 3 east, and worked in there about three months with Angell in that country up there. He knows about townships 38, 39, 40 and 41, about as well as he could any country. He always looked forward to the possibilities of agriculture and farming whenever he was in the country, and as a timber cruiser it would be a part of his duty to classify the soil and the land. They make that up in their notes, what per cent of it would be fit for agriculture and grazing. He could take the blue prints of each township and point out practically every forty acres in it which would be suitable for cultivation. There are sections in there through townships 38, 39, 40 and 41, ranges 3 and 4 east, that he presumes with a little time he could name. He would say that fifty per cent of it could be used for cultivation. Now, when he says that, he speaks from people that he knows have gone in there and removed the timber off the lands. For instance, in township 38, in township 40, range 8 east, parties went in there, and on land he did not himself at that time think was any good, they took the timber off and put it in cultivation and are making a living there. Also old man Clyder, who lives at Green Spring Mountain, on the Ashland-Klamath Falls road, the old man has been there, he does not know how long, but ever since

he can remember, and his land is a side hill, he thinks he has a hundred and sixty acres on a side hill, and it is pretty stony and rocky, the old man has made a living on it continuously. He raises fruits and vegetables, some hay, keeps a few milch cows, a few pigs and chickens. In the territory west of Ashland and west of the base line or the meridian line, he is not so well acquainted till one gets into Josephine County. In Josephine County he is pretty thoroughly acquainted with townships 39 and 40 south, ranges 7, 8 and 9 west, and has made a pretty careful examination of those lands from being employed there as a cruiser and locator on the unsettled lands. He looked at a great many sections there that are patented. In townships 40 and 41 south, range 9 west, he has made detailed cruises on all of them, elevations on every five acres. In township 40 south, range 8 west, he has been over pretty thoroughly and he would say that practically all—he would say 75 per cent of township 40 south, range 8 west can be cultivated. In township 39 south, range 8 west, all of that country in there is settled. The yellow markings on "Defendants' Exhibit 259" indicate lands that were lost by prior entries. Pointing to the extreme western tier of sections around Kerby, 75 per cent of it is fit for agriculture. He would say 40 per cent of that extreme western tier anyway, in his best judgment, would be suitable for agricultural purposes—speaking of the entire township. In townships 38 and 39, he is thoroughly well acquainted with them, and take it all into consideration, he would say that anyway 40 or 50

per cent of it could be cultivated. Some of it is rolling, but then it is good soil. The soil is good, free from stones. About the only thing one would have to do to put it in cultivation, would be to take the timber off where there is timber on it. It is not all timbered, the timber runs in bunches, it is some scattering. A section occasionally has a good stand of timber on, and may be the next section will have scarcely any on it. He is not well enough acquainted with the other sections or townships, or parts of townships, there, to pass his opinion as to the amount of agricultural land on them. He has been over a portion of townships 38, 39 and 40, range 6 west, but he has not been over this thoroughly enough to pass judgment on the agricultural land there is on them. He has been practically all over the county, but not to look it over carefully.

Q. Now, Mr. Bailey, if these unsold lands of the railroad company were divided into 160-acre tracts, and taken by a settler for the purpose of making it a home, and engaging in agriculture, what percentage of those 160-acre tracts do you think would be suitable for that purpose, that a man could go on and successfully farm in a modest way, sufficient to earn a living for himself and family, and the tract need not be in quarter sections, but by legal 40-acre subdivisions lying contiguous?

A. You want the percentage?

Q. The percentage of 160-acre tracts, in your opinion, in this area that you are acquainted with?

A. In my best judgment, 80 per cent of it.

Q. There are sections, I presume, that none of it would be susceptible to agriculture?

A. There are sections that I do not think any one could go onto and make a living, and then there are sections again that are all good tillable land—take the whole section. Of course, 20 years ago, when there were few people in the country, why, they did not look after those things as closely as they do at this time.

Whereupon witness testified, that the demand for lands for farming purposes by settlers, homesteaders and people of moderate means who are looking for farming lands has been on the increase the last four or five years, to his knowledge, rapidly increasing. There are settlers in several places on lands that he has mentioned, some of them are earning their support from the lands—in fact, most of them are.

Q. In your opinion, Mr. Bailey, what has been the effect of the railroad company's failure to comply with the conditions of this grant in selling their lands to actual settlers at $2.50 an acre in tracts of 160 acres, in the localities that you are acquainted with in Jackson County, and Josephine County?

A. It has been discouraging. It has had a discouraging effect.

Q. In what way, Mr. Bailey?

A. When people go out to look for a homestead or a piece of land that they can get hold of, acquire title to, make a living on, and they find it is railroad land and it is not on the market, they become discouraged.

Q. Has it retarded the settlement, then, in those counties?

A. To a certain extent, yes.

Whereupon, on cross examination, witness testified, that the Ashland-Klamath Falls road has been a public highway as far back as he can remember, and is one of the oldest roads in southern Oregon. They go over the Cascade Mountains between Rogue River Valley and Klamath Falls, also by what they call the Dead Indian road at this time, the road has been open there ever since he can remember, but they have not been traveling it a great deal until the last ten, twelve or fifteen years. The road that he speaks of as the Ashland-Klamath Falls road is a road that has been known to the travel and to those counties and to the state for a great many years before his time. His first recollection of the country is that the first stage station out of Ashland on the road to Klamath Falls was at Howard's. That is right on the west side of the top of the divide, Green Springs Mountain, about sixteen miles out from Ashland. The next station was at the old John Lacy place, which witness bought later on, in section 6, near Corral Creek, twenty-two and a half miles from Ashland. Then the next station is the old Parker station, just across the line in Klamath County, thirty-two miles out from Ashland, and the next one is the old Cooper station, about forty-six miles from Ashland. They carried the mails over this road for many years. The military operations in the Modoc war were in 1873, a little before his time.

He was not old enough to have any knowledge of that. He had been told there was a trail that goes out by Buck Lake—that is what they now call the Dead Indian road, Horseback trail, and this was the old stage road at that time. It is better now than it used to be. It is his understanding that they are planning to build a road from Medford by way of the Forest Reserve over to Crater Lake, but this would be, in his opinion, rather a round about way to get to Klamath Falls, but he knows there was such a project as that and that both counties had adopted it and the state undertook to make an appropriation to cover it, and that was defeated on the ground that it was unconstitutional. Medford was very much interested in that. The place that his father owned had one hundred and thirty-three acres and he does not remember how long ago that homestead was filed on or taken, and he never looked it up from the records. He knows that Mr. Purvis lived there for some time before his father went there, from the improvements there were on the place. Forty acres of it is a fraction, he thinks it would be lot 4 in the even section, and then there was eighty acres in the railroad section. Purvis took that before there was any railroad grant, he thinks. The grant bears date July 25, 1866, but the road was not built or definitely located, he supposes, until after Purvis took his homestead, at any rate, the railroad did not get this piece of land that Purvis homesteaded. There was no land in cultivation on the Purvis homestead at the time his father went onto it. There was a log house and barn, his father put on fences, and later built a new

house and barn and cleared perhaps thirty acres on Jenny Creek, not all right on the creek bottom, it was on the creek, and then back up on the bench, the creek ran through it. There was about six acres he would think, right on the creek bottom and the rest of it lay up west of the creek, up on the bench land, perhaps from fifty to a hundred feet above the creek bottom, sloping toward the creek bottom. Some of this land his father cleared had pine timber on it, scattering pine. There is underbrush out there in places, but as a rule it does not prevail in Josephine County or in the western part of the grant. What little timber there is on that particular land is generally pine. Pine predominates in the Jenny Creek country, there is fir mixed through it. The best sugar pine and yellow pine in Oregon stands between Jenny Creek and Klamath Falls, and that is regarded as the best sugar pine and white pine in Oregon or on the coast, and is said probably to be the best in the United States. He thinks Hopkins bought forty-one thousand acres of fine white pine and yellow pine and sugar pine.

Q. Well, that is the character of the timber that I speak of?

A. Yes sir.

His father kept a few cows and hogs and raised a few horses to sell when he was making his living on this Purvis homestead, he raised draft horses, just ordinary farm horses. His father had stock—cattle—that ran at large, but not over thirty or forty head of cattle that

roamed over that country. He sold cattle for beef, usually figuring on turning off from a hundred and fifty to two hundred dollars worth a year. He did not always turn off hogs for the market, he almost always made bacon of his hogs for his own use, and had some to sell to the people that traveled along the road, that is, to travelers who would come along, and he would sell them bacon by the pound as they might need it, and in that way he would sell eggs, butter and chickens, that would be to the travel that would pass over this Klamath Falls and Ashland road. Three years he dairied and sold his butter in Ashland, then milking ten cows—he thinks it was in 1902 and 1903, or 1904, somewhere along there, he would not be right sure as to the time. in summer these cattle his father had would usually be turned out on the range and go wherever they wanted to—very seldom would go over two miles from home. No one that he knew of herded cattle out into these mountains or up Jenny Creek. A few ranchers that were scattered along this road did keep some cattle and as a rule they grazed out everywhere, wherever they wanted to, wherever they would choose to go, and they were at liberty to go. These railroad lands were all unfenced. His place was not up Jenny Creek from there, it was right west about a mile and a half from his father's place, it formerly was a homestead, he could not say how long it had been taken. John Lacy took it as a homestead and later he sold it to Grenville Naylor, and witness bought it from Naylor. Lacy was the man that kept the stage station and witness kept the stage station

for a year. When he was keeping the stage station, he simply rented them a barn, fed their hostler that took care of the horses, and part of the time they took their meals there, part of the time they took breakfasts at his place. The travel was not very heavy over that road at the time he kept that station. The stage went by there twice a day, once each way, it was a two horse stage. There was about six or eight acres cleared on his place when he went there and he probably cleared between twelve and fifteen acres. The lands that he cleared were timber lands, and part of them very heavy, it was pine timber, and what he did not make into wood for his own use he burned up. He thinks that everything that they raised there they sold to the travelers along the road—practically everything that they raised, and he also kept stock, too. He thinks that the most cattle for beef or stock that he ever sold in any one year while he was there, was ten head. In his estimate of all these lands with which he is acquainted that would be agricultural, he referred to lands after the timber was cleared off. The location of land there for timber or for any other valuable purpose, became active in Jackson County along in the early 80's, 1885 or 1886—he does not just remember when. He cannot remember the exact dates when timber became an object of inquiry by investors, but then it was along in 1888 and 1889, along in there, and from that up to '92 and '93. Hopkins bought in there along about 1890 — there was lots of timber changed hands in that country before 1900. He has cruised for these timber people and did cruising for in-

dividuals before they finally located on a quarter. If they came to him and asked him if he would go and look at a certain quarter section for individuals who wanted to locate on a piece of land, or if he knows of a quarter section of land that would be suitable for a timber claim or homestead, why, as a rule, they never made much difference, they took it either way they wanted it. He located a considerable number of timber quarters.

Q. Well, now, what is the practice—do you charge —a man comes into your office and says: "I want a good timber quarter somewhere in Jackson County," and you tell him that you could locate him, do you keep a set of plat books or blue prints or memoranda from which you can pick out a good quarter?

A. I do.

Q. And then do you charge him so much for locating him if he finally takes it?

A. I do.

Q. What is the ruling price? How do you govern that?

A. Well, the first locating I ever did, I got $50 a quarter for it.

Q. What do they pay? What is the current rate now, about?

A. $250.

Q. Now, what do you do when a man says, "Well, I want you to get me a quarter," what is the process? Do you go out with him and cruise it?

A. Go out with him and look it over, and run it out carefully.

Q. And then, do you cruise it by five acres?

A. If he wants it, why, we do.

Q. And then you charge him for the time that you are cruising in addition to the location fee?

A. Certainly. Certainly.

Q. Then, what decides whether he will take it or not—the amount of timber that is on it?

A. The amount of timber that is on it, and the location of it.

Q. How many claims do you think you have located in Jackson County during the last ten years, or the time that you have been cruising?

A. Not many in Jackson County. I have located a great many more in Klamath and Josephine County than I ever did in Jackson County.

Q. Well, have you located several hundred in these counties, do you think?

A. Oh, perhaps 250.

Whereupon witness testified, that he had located these people under the timber and stone act and under the homestead act, both ways. He presumes that in all the locating that he ever did, 75 per cent of them took under the timber and stone act. He has located a number of homesteads that have some timber on them. In looking for a homestead for people that wanted to take

a homestead, he did not ignore the timber. If he found a quarter section that could be located under the homestead, that had good timber on it, it was evidence that the land was—the better the timber was the better the land was. The more timber a man could get on his homestead, the better the land.

Q. And of course the timber was not any drug to it?

A. It was not.

He does not know that he could say what timber is worth per quarter section there now. The best timber in that Jenny Creek country there where this fine timber was, he knows what they can buy it for. There is some timber there that is not on the market, but there is lots of timber on the market through the country there that can be bought for fifty cents and a dollar a thousand. Three million feet on a quarter there makes it a merchantable quarter for timber in that country out there, to make it worth taking. Take the unsold railroad lands that he has been over, and as a whole he does not think they would average a million feet. Twenty-five per cent of them would have as much as two or three million feet on them. The best timber has been picked out, culled out, by these timber buyers. The character of that which is unsold, in its soil is similar to that that has been sold, but the timber won't average as good. Parts of it is in the timbered country. Western Oregon is considered a timber country. Until one gets to the divide there, going from Ashland east, there is no timber

in that country to speak of at all, that is from Ashland on out to the eastern boundary of townships 39 and 40, range 2 east. There are people living on top of those hills in sight of Ashland. Every place that has a place big enough to build a house, most, has a settler on it. That is about ten, twelve or fifteen miles from Ashland, and there is some of this land outside of the range of this yellow field on this map, "Defendants' Exhibit 259." There has been lots of it settled on recently. He does not mean that there are settlers covering all that bald hill country east of Ashland. The most of it is owned, but he says there are settlers living around there wherever they can get a forty, and people are making a living on them. Those hills, most of them will produce anything. The most of the settlers that have gone in there recently have not the opportunity to get a few acres of bottom land, and they are tilling the soil on those hillsides, taking off the brush, setting it out to fruit, within ten to fifteen or sixteen miles of Ashland. Less than four months ago he visited four places up on what they call Tom Spring Mountain, about eighteen miles from Ashland by wagon road, by legal subdivision it is about twelve or fourteen miles. These foothills around the Rogue River Valley are, most of them, barren except they are covered with scrubby growth of chaparral, manzanita, and some pine. In this particular locality, they haven't anything there but oak and service and pine, and one will find poison oak most any place. These people take these lands as homesteads. In the last three, four or five years, as the lands increased in

value in the valleys, of course, it increased the value of the foothill ranches. He does not know that he could place a value on these lands in the Jenny Creek country that he calls timbered lands, that is, what they are worth an acre, there is no market, of course, different prices, on an average of it right through, they would perhaps be worth fifty dollars an acre. There is not much—not any—difference between the railroad land and the even section in the Jenny Creek country. The best timber has been selected and bought up, and the most of it, both on the even and odd sections, would be worth fifty dollars an acre if it was cleared up and put in cultivation. In its present condition, in his judgment, it would be worth twenty dollars an acre. He never applied to purchase any of this railroad land and never located any one who attempted to make an application under this Act of April 10, 1869, to purchase a quarter section out there for two dollars and a half an acre from the company. He knew of that being done. He had forgotten the fact—but he had located a quarter section for a man under this statute. He does not know whether he can tell the name or not, but the land was in section 3 and 9, township 40, range 4 east, it was all timbered. Those particular quarter sections would perhaps run three and a half to four million feet. It was twenty-six or twenty-seven miles from Ashland in the Jenny Creek country, and it was a railroad quarter. The man went onto it but did not build a house on it. He posted a notice on it and made his claim under the Act of April 10, 1869. He did not pay him in full for locating him

on it—he paid him part of it. This man came to witness to locate him on the railroad claims, and he told him that under the present circumstances witness did not think he could get it. He said he wanted a claim anyway, and if witness would locate him he would pay him a hundred and fifty dollars, and witness told him it was his opinion that he would never get the land. He was not to pay the hundred and fifty dollars until he got the land, and he has not got it yet and witness has not got his hundred and fifty dollars. He picked out a pretty good timber quarter, which was what the man wanted. He got about the best there was in there. It would be hard to place a value on that quarter at the present time, with the timber on the ground, it would perhaps be worth four or five thousand dollars, probably more, but the land itself, if the timber was off, would be worth fifty dollars an acre easy enough. The man claimed to him that he wanted it for a bona fide home.

Q. They all want to be actual settlers for about ten minutes, until they get the title. Isn't that about right?

A. I couldn't say as to that. I don't know anything about that.

Q. They are very careful to pick out the best timber they can find? Isn't that the fact?

Q. Isn't that the fact?

A. Well no, not always.

Q. That is the rule, isn't it, as far as you have had

any experience?

A. Well, in some cases, of course, they look forward to the value of the timber, and in others they want something that can be cultivated. They would much rather there would not be any timber on it.

Q. 40 or 50 years from now, why, they think in their mind that this timber will be removed, and then they will have some land? Is that the idea?

A. I couldn't say what their idea is.

Whereupon witness testified, that he thinks this man had a family and lives in Ashland now, but he could not tell what his business is.

Whereupon, upon redirect examination, witness testified, that there were five of these people who came to him and told him about the prospects of the railroad land being put back on the market and they wanted a claim, wanted him to go and select a claim, that is, help them select a claim. He gave them his opinion of it, and they said they were willing to take their chances, they knew they could get it, and the location where they wanted, in his opinion, had been sold to this man Hopkins, and he told them that. They said that that did not make any difference—Hopkins would lose it. At first they didn't want to pay anything, until they got their location on the land, that is, until they got their aplication allowed. He told them he could not put in his time for nothing, and they finally agreed to pay him fifty dollars apiece to go and show them the land, and then pay the other hundred dollars when they got their application

allowed. They went on the land and started to build a house, put a foundation on it, put up a notice. He showed them several sections, and they made the selections themselves, then they made an application for the land, he was told—he don't know that to be a fact, but they were refused. This man from Ashland that he spoke about paid him fifty dollars, he didn't get the hundred and fitfy dollars, but only got a partial payment. He merely showed them the lands that they wanted to see, he showed them several sections in that part of the country and they made their own selections. They thought those were the better. They looked at the agricultural part of it. They could have gotten other claims there, perhaps located just as well as these, only the soil was not so good. There was more rock available than there was on those particular sections. They solicited his services but he did not solicit anyone to make a filing, and advised them against it. Most of the people he has testified to having located timber and stone claims for in that country, are people of moderate means, some of them practically had nothing—say three or four hundred dollars. They lived principally in different parts of the United States, most of them lived around Portland, Oregon, and most of the people who bought timber and stone claims were city people, merely speculating in timber. Most of the people were from the city of Portland, some were from Seattle. The Hopkins people were from Lock Haven, Pennsylvania. The old gentleman is dead, his sons still retain the title to the timber lands. They own all the best of the timber lands in this country, the

Hopkins estate and the Oshkosh Land and Timber Company own the best of the pine through that section of the country. Speaking of the land being cultivated on the mountains and hill sides, old man Tyler has been there for the last forty years, and he has nothing only a hillside ranch. It is rolling, in his opinion if it had had timber all over it he would have had better soil and would have been growing more crops than he is at the present time. These last persons that he spoke of are new people in the country, up on the side of the mountain, they are located on the side of the mountain. It is not steep like some of these coast mountains are, but they all have nice gardens and some grain there. Their grain was cut when he was there, they had it in stacks and in the barns—some of them did not have any barns. Tyler's place is about thirteen miles from Ashland by road. On above Tyler's place, still further up on the side of the mountain, where they have no bottom land at all, there is D. N. Davis and his two sons, they both have homesteads there, in section 8, township 40 south, range 8 east. The old gentleman has been there for a number of years. He is cutting down the timber, burning it up, clearing the land there on the side of the mountain, making a living for a good big family. His two sons have taken homesteads there. One son has eighty acres in his homestead, that is in the timbered country. The first lands that were taken in this country where he has lived since his birth, were the most level valley land that they could find; then as the land increased in value and the population increased, they moved out until they are up on the

mountains, and all through the mountains at the present time. Most of these lands have been acquired by homesteads. He does not know but few people who got them any other way. He thinks he could mention one or two cases where they bought railroad lands, Kincaid, he thinks, bought some railroad land in what he thinks they call Hyatt Prairie country. The Barrons, he thinks, bought a little there, in Township 39-3 South, on the headwaters of Keene Creek. Practically all the lands the railroad company has sold in Jackson county were the sales made to these large companies. All the titles have been acquired from the railroad company, so far as he knows, only by what they call capitalist companies, people that wanted it for speculation. He does not know whether the railroad company has parted with the title to this land that his father wanted to buy, adjoining his farm there in township 40 south, range 2 east, and he does not know whether the company still owns that land.

Q. What is your opinion, Mr. Bailey, as to the effect, the difference in effect between holding these lands as the Railroad Company have the present holdings, and the condition that would have existed had the lands been open to settlement under the conditions of the grant at $2.50 an acre in 160-acre tracts? I mean, holding it there with this timber on it that exists there, or making farms of it—the difference between those two effects upon Jackson County especially?

A. In my best opinion, there would be a good per cent of it occupied at this time by bona fide settlers.

Q. What do you mean by settlers?

A. I personally know of at least one hundred homes that would be built in the country, that are not here now, if people could have acquired title to railroad lands.

Q. What would those people—what business would they engage in?

A. In general ranching.

Q. Ranching is a term that here in the west we apply to farming?

A. Yes, sir, farming. A farm, the way I look at it, is a large place that you raise grain on. A ranch is a general ranch, a little stock and fruit and vegetables and hay.

RECROSS EXAMINATION.

Q. You mean a stock place?

A. Yes, sir.

Q. Well now, suppose the Railroad Company had sold these lands, these timber-lands, at $2.50 an acre, in quantities of not to exceed 160 acres, within the last five or six years, and given them a good title, how many of them do you suppose would have sold their lands to these timber people at an advance of about $20 or $30 an acre?

A. I don't think any of them would, because I don't think they could have gotten it.

Q. Well, don't you think the most of them that

paid $2.50 an acre, if they had got $20 they would have sold out, wouldn't they?

A. In some instances they might have. But then, I know of lots of good people that would have been living on those lands today, improving them, and would have taken them from an agricultural standpoint fully.

Q. I understand that is what you are here to testify to, about the agricultural end of it. I am asking you this question, Mr. Bailey: Suppose the Hopkins land had been sold to these so-called actual settlers, at $2.50 an acre within the last 10 or 15 years, they could have turned around, couldn't they, and sold these Hopkins lands for from $30 to $50 an acre, couldn't they?

A. I have been told that they could have been sold for $40 an acre.

Q. Don't you know they could have sold them for at least $30 an acre any day almost?

A. There has been times when it could have been sold for that, I am satisfied of it, yes.

Q. Well, now, then, these actual settlers, buying at $2.50 an acre that character of lands, when they got the deed, next day they could have sold it for $30, couldn't they, per acre?

A. Well, perhaps they could, yes.

Q. Well, now, do you mean to tell me that they would not have passed the title to these lands to the timber investor or speculator, under those circumstances?

A. Not in all cases.

Q. Not all cases, but in the most of cases they would, wouldn't they?

A. Well, now, that is pretty hard for me to say what people would do.

Q. Well, don't you know that that would be the case, the natural thing to do ?

A. Well, I don't know that it would, no, I don't.

Q. Do you want the Court to get the impression that you think they would not do that, when they could make $27.50 an acre by just paying $2.50 and getting the deed, and getting it right back again?

A. Well, what—

Q. Just answer my question.

A. I don't know that I clearly understand the question yet.

Q. That is your answer, is it?

A. Well, I am not prepared to say what people would do in those instances, but I can only speak from personal acquaintance with people that I do know. If they owned some of those best timbered lands, they would not part with the lands for no $40 an acre.

Q. They would want probably $100 as an investment?

A. They would consider the value of the land much more than the timber that is on it.

Q. Well, they would not consider the timber, then, of any value?

A. They certainly would.

Q. And yet they could sell their claims for five to six or seven thousand dollars a quarter?

A. Some of them, yes.

Q. What did these people who proved up under the Timber and Stone Act, what did they do, most of them, with their quarters? Hold them and sell them to timber people?

A. Most of them sold them. Some of them still hold their claims.

Q. That is, they got them for $2.50 an acre, and sold them for as high as $25 or $30 after holding them a year or two?

A. Well, I will say all the way from $5.00 to $25 and $30.

Q. From $5.00 to $25.00 an acre?

A. Yes, sir.

Q. And that they would do in two or three years after they have made final proof, paid their $2.50 and got their patent?

A. Yes, sir.

Q. Never went on the land, and never struck a tree or cleared an acre on it?

A. They all went on the land, all that I ever knew anything about.

Q. They went on the land and looked at it, under

the requirement, as they thought, of the Land Department, which required them to swear they had seen the land?

A. Yes, sir.

Q. Some of them would go and look at it half a mile away?

A. I never located anybody in my life that looked at it that far away.

Q. There was a requirement of the Land Department that they had to swear in making their application they had seen the land?

A. They had to testify that they had personally examined each and every legal subdivision.

Q. Yes, and that it was chiefly valuable for timber?

A. It was chiefly valuable for timber.

Q. And was not agricultural?

A. It was not agricultural.

Q. And you have located a great many, and they have been able to sell at from $5.00 to $25.00 an acre?

A. When they have sold, yes.

Whereupon, upon redirect examination, witness testified, that under the requirements of the Timber and Stone Act, the affidavit required that they should make oath only that the land was chiefly valuable in its present condition for the timber or stone that was on it. There should be a distinction between the speculator, as one

may term the Timber and Stone Act man, which requires no residence on the land, and the settler. His way of looking at it is, that if the land was all sold to Hopkins, it would never benefit anybody but that man Hopkins, while if it was sold in one hundred sixty acre tracts, it would benefit each applicant on that tract, even if they did sell it for the timber that was on it.

Q. If they would sell, however, to an actual settler, a man who would actually settle on the land, for what purpose would he use it? For what purpose have those men who have made bona fide settlements, used the land that they have settled on in this community that you are acquainted with?

Q. Do you understand the question, Mr. Bailey?

A. I don't know that I do.

A. Well, if they would sell it, they would use the money they would get for it, generally speaking, to put themselves some place in a comfortable home, but the most—well, say 50 per cent of it, would be inhabited.

Q. Now, there are men, are there not, Mr. Bailey, who have taken up lands, even under the Homestead Act, merely for the purpose of speculating in the lands, not for the purpose of making it a home, as you would judge from their actions after making proof?

A. Well, in my opinion there has been.

Q. Now, isn't there a distinction between those men and the man who has taken up the land with the intention of making his home on it, farming it?

A. There is.

Q. Then, if these lands were sold in 160-acre tracts, to actual settlers, the lands would be disposed of practically as the Government lands have under the Homestead laws?

A. Along the same lines; couldn't be otherwise—couldn't.

Q. And fraud could be guarded against in the same manner that the Government guards against fraud?

A. Certainly it could be.

Whereupon witness testified, that he has spoken of this Jenny Creek timber, but there is no other timber in that area that compares with that as to value or stand. It is said to be, by all large holders of timber lands, the finest body of sugar pine in the United States, and it is not a fair comparison as to the area with which he is acquainted as to the timber value.

Whereupon GRANT TAYLOR, called as a witness on behalf of complainant, being duly sworn, testified, that he lives at Winchester, Douglas County, Oregon, and has lived in that county about fourteen years, eight years of which he lived in Winchester. He had a farm there above Winchester about a mile east on the North Umpqua, consisting of four hundred and seventy-nine acres. He sold that and does not own it now. He farmed about seventy-five acres of it, raised potatoes, corn, grain, and hay, and did general farming and had stock on the place. The land that he farmed was along

the river, but the pasture land was rolling. He has cruised timber some. He followed locating and looking over land for companies about eight years and has cruised some land for people and made reports as to the land, and as to some of these lands in these reports he reported on the farming possibilities, soil, and matters of that kind, and in some of them he merely gave the estimates of the timber. He is acquainted with the possibilities of farming the part of Douglas County over which he has been, and he is so acquainted from his actual experience as a farmer and his observation of the farms he has seen. Before going to Douglas County, he lived three years at Salem, Oregon, and in Oregon altogether about seventeen years. Referring to "Defendants' Exhibit 259," he is familiar with township 22, ranges 1, 2, 3, 4 and 5 west, inclusive, and as far south as township 26, ranges 1, 2, 3, 4, and 5 west. He obtained his knowledge of these lands in looking over the timber and locating. In locating people and cruising the timber, he would run the lines ordinarily of a section or subdivision of the land that he was looking at. If the timber was removed from those lands, marked in green on Defendant's Exhibit 259, in that area with which he is acquainted, he would say that 50 per cent of it could be rendered suitable for cultivation,—by cultivation, meaning tillage of the soil,—basing his opinion upon his knowledge of farming as carried on in the communities in the vicinity of the land. This average would apply to all these lands with which he is acquainted. Some places, a man could farm a hundred and sixty acres, and other places he

could not get more than ten or twenty acres on a hundred and sixty acres,—that would vary as to the various tracts, the character of the land, the character of the country.

Q. Mr. Taylor, in your opinion, would these lands if divided into 160-acre tracts be suitable for actual settlement, for a man to go on there and engage in farming, for the purpose of making it his business, and for the purpose, of course, of supporting his family, as an ordinary homesteader would do?

A. Oh, probably one-third of the land could be cultivated and made homes of.

Whereupon, upon cross examination, witness testified, that he is forty-nine years old. His place is about a mile east of Winchester and Winchester is about five miles and a half from Roseburg. The North Umpqua is quite a considerable stream at Winchester. It rises up near Crater Lake and empties at Winchester Bay into the Pacific Ocean. He has been a timber cruiser and timber locator for about eight years, and he has perhaps located a hundred and fifty timber claims in that time. He was working for himself when he first started locating parties from the eastern states. When he started out, he charged these people about fifty dollars a claim, but finally got up to two hundred dollars after claims got scarce. As a timber locator for these people, he would take them out, show them the land, show them the lines, take them around the lines. He kept a list of what he thought was the best available quarters of tim-

ber. He had maps of them and has them yet. He located quite a number of people under the Timber and Stone Act and a few under the Homestead Act. Quite a number of these people were from Portland, some from the state of Washington and some from the eastern states. Locating began actively about seven years ago, and timber first began to be considered an object of value about ten years ago. These people that he located, finally got title to the lands, some of them sold, and some have them yet, and some of them held the land for investment. They were timber lands. A good timber quarter runs from three million to ten million feet, some of them, some better. A ten million quarter section on the Umpqua that could be logged is worthy about fifty cents a thousand for stumpage. In buying these lands, they usually bought a hundred and sixty acres, and took the title to the land.

"Q. Now when you say that probably one-third of these lands could be made farming lands, you mean after the timber is cleared off?

A. Yes.

Q. And the stumps are grubbed up and made so it could be plowed?

A. Yes."

He never applied to purchase any of this railroad land and he never located any of these people on any railroad lands. These locations were all in Douglas county that he made and were made in the timber belt.

Whereupon, upon redirect examination, witness testified, that he spoke of one-third of these one hundrd and sixty acre tracts, he thought, as being suitable for the purposes mentioned, and a man could settle on hundred and sixty acre tracts of these lands with only ten or twelve acres of plow land, and make a living on them for himself and his family. That would depend somewhat on the man that located there. When he estimated one-third, he estimated that that would, in his opinion, make the living that he is accustomed to.

Whereupon, upon recross examination, witness testified, that these men that would go on there without any means at all, would have to work outside for a while to get something to make their little improvements and help them clear up the land.

Whereupon G. E. KELLER, called as a witness on behalf of complainant, being duly sworn, testified, that he is thirty-eight years old, lives three miles south of Dillard, in Douglas County, Oregon, and has lived in Oregon since 1885. His occupation, since he has grown to man's estate, has been mostly farming and laboring in Oregon. His step-father was a farmer. Witness farms about twenty-five acres at the present time. His farm is located in section 7, township 29 south, range 6 west, and he raises principally garden, hay, stock, but not grain to thresh. He raises grain to feed. He uses wheat and oats for hay, and vetch. He is acquainted with the farming business in that locality. Referring to "Defendants' Exhibit 259," Dillard is situated

in township 29 south, range 6 west. He is practically acquainted with that whole scope of country there, township 29, ranges 6 and 7, township 30-6 and 7, and east half of this particularly, the east half of townships 29 and 30-7, and he is acquainted with these up above Dillard (pointing to yellow field just above Dillard). Those townships contain a substantial amount of unsold railroad land. There are settlers living in these townships on government land, adjacent or near unsold lands of the railroad company, as indicated by the green markings, and they are engaged in farming and agriculture. That locality is pretty thickly settled, and the lands they are using are of the same general character principally as the railroad sections. He would say that 66 2-3 per cent of these railroad lands could be rendered suitable for cultivation after removing the timber or brush, and by cultivation meaning tillage of the soil, removing such of the timber or brush as would be necessary to put them in a state of cultivation.

Q. Now, if those lands should be taken by actual settlers in quantities of 160 acres, by contiguous 40-acre tracts, what is your opinion as to the number that would be, the percentage that would be suitable for settlement, and would furnish support to a settler such as a homesteader?

A. I think 50 or 75 per cent in different sections.

Whereupon witness testified, that these settlers or farmers raised in this vicinity, grain, all kinds of small grain, corn, all kinds of berries, fruits, tomatoes and mel-

ons—all kinds of farm products. There are farms there, all the way from two-acre farms up to two thousand acres. There are not so many of these thousand-acre farms now as there were. Most of these big farms have been subdivided. The average acreage of these farmers who own and farm and usé the land for farming purposes in the vicinity of these railroad lands, is from two acres to four hundred acres, and he supposed about an average farm, take the country through, would be about thirty or thirty-five acres. Most of these people live on the land and follow the pursuit of farming.

Q. In your opinion, Mr. Keller, what has been the effect of the failure of the Railroad Company to fulfill the conditions of this grant, in failing to sell to actual settlers at $2.50 an acre, in tracts of 160 acres, and in withdrawing the land from the market?

A. I should say it had retarded settlement to a certain extent, quite an extent.

Whereupon, upon cross examination, witness testified, that he had taken a homestead of forty acres in section 7, township 29 south, range 6 west, in 1896, lived on it three years and commuted it. He paid two dollars and a half an acre for it. It was in a railroad section. He did not live there at the time the railroad grant was made, but he had heard that there was a man who was squatting on there, his settlement was initiated before the grant took effect, and this man afterwards abandoned it and it became public land. It was not railroad land at the time witness filed on it. Witness cleared

about six acres of this forty-acre tract, and the man who preceded him had not cleared any. The balance of the forty acres had very little timber, but was pasture and brush. This forty is southwest of Dillard, three miles by the road survey, and witness lives on this land and makes his home there. He does not own any other land besides this forty but he farms other land, having a lease of a hundred and sixty acres adjoining. It is not all open land; there are about ten or twelve acres on this 160 acres that is plowed, and a lot more that is slashed, and a lot more of it is open land that he does not farm but uses for grazing purposes. He does not run a stock farm to any great extent, but raises a few cattle, milk cows, chickens, garden stuff for sale, and sells his garden stuff at Dillard or Roseburg. He sells a few potatoes, just a few strawberries, a few chickens occasionally, and eggs and butter and cattle. The number of cattle that he sells varies with different years, he sells from one to five head. He raises hogs for his own meat, but does not sell any. The land around in that vicinity is not all fenced, there is a good deal of land out to the common. This land, other than the railroad land that is not fenced, belongs to different settlers. They have not fenced all their land. They have fenced a little piece where their buildings are, where the land is cleared, and the balance is left open. These settlers do just about the same as he does principally. Their stock can go on the common, any place they want to, and if a man wants to keep stock off his land, he must fence against it, that is the general rule in farming country, especially in timbered country.

He pastures the railroad land and doesn't pay anything for it, and pastures the government land just the same. The railroad pays the taxes, if anybody pays it, on these lands, and the farmers adjacent get the benefit of any pasturage. He does not cut any wood on any railroad land, and people do not make a practice of cutting wood on railroad lands. He never applied to purchase any railroad land directly from the company and never made any application to the company on one of these blanks, by which parties apply to the company to purchase one hundred and sixty acres at two dollars and a half an acre.

Q. You have heard about Mr. Leavengood out there at Roseburg, working up 3000 or 4000 people in Douglas county on lands, didn't you?

A. I have heard of it.

He has never done any of that and he is not one of Leavengood's applicants and never located any homesteads other than his own. Dillard is an old settled part of Douglas county, old man Dillard was an old pioneer who came there in the '50s and took a donation claim where Dillard is. The railroad went through it and bought its right of way through his place. A good deal of that land around Dillard was taken under the Donation law. It is sort of little valleys and foothills around there. Most of the railroad land that is left, with which he is acquainted, is back in the foothills generally. Not all of the best agricultural railroad land that was there, has been bought a long time ago by farmers, but that

which was the easiest to get at, closest down to Dillard and in that vicinity, was bought by people, farmers and others, a good while ago. The unsold railroad land in that section that he speaks of, south of Dillard and southwest of Dillard, is on Looking-Glass Creek, about ten or twelve miles from Dillard, from this yellow land shown on "Defendants' Exhibit 259." That is all open country up as far as Ten Mile, and south of Ten Mile at Olalla is open country. As one goes further up the Looking-glass, the valley narrows along the Looking-glass, and there are some Donation Land Claims on the Looking-glass away south of Olalla, and that was settled away back in the '50s. The railroad quarters that are left in there are covered more or less with timber and brush and hills and some rock. Some of the hills are tolerably high and tolerably steep.

Whereupon, upon redirect examination, witness testified, that this six-mile limit as shown on Defendants' Exhibit 259 of the Roseburg and Coos Bay Military Wagon Road comes nearly down to the limits, down very near the town of Dillard—it comes to Dillard. That land, according to this map, was lost to the grant by reason of the grant to the Roseburg and Coos Bay Military Wagon Road. He knows that as a matter of history. He knows that in south of Dillard there, this wagon-road grant is from Dillard north, as shown on the map, south of Dillard one will observe the green markings on the map within a mile of Dillard there to the south. The green markings on Defendants' Exhibit 259 show that the railroad hold-

ings are practically intact.

Q. A very few of the blue markings appearing in these townships. Now, in 29-6, according to the Bill of Complaint, Mr. Keller, the Railroad Company still holds 120 acres in Section 1, 223 acres in Section 3, all of Section 5, 416 acres in Section 7, 446 acres in Section 9, 195 acres in Section 11, 600 acres in Section 13, 345 acres in Section 15, 309 acres in Section 17, 292 acres in Section 19, 492 acres in Section 21, 520 acres in Section 23, 400 acres in Section 25, 560 acres in Section 27, 160 acres in Section 29, 320 acres in Section 33, and 240 acres in Section 35. In Township 30 South, Range 6 West the Railroad Company still holds 464 acres in Section 1, 470 acres in Section 3, 476 acres in Section 5, 622 acres in Section 7, 480 acres in Section 9, 400 acres in Section 11, 120 acres in Section 15, 495 acres in Section 19, 440 acres in Section 21, 40 acres in Section 23, 111 acres in Section 25, 320 acres in Section 29, 131 acres in Section 31, 40 acres in Section 35. In Township 29 South, Range 7 West, the Railroad Company still holds all of Section 1, Section 11, Section 13, Section 15, Section 31 and Section 33, and 229 acres in Section 3, 162 acres in Section 5, 458 acres in Section 9, 200 acres in Section 17, 617 acres in Section 19, 280 acres in Section 21, 598 acres in Section 27, 240 acres in Section 29. And in 30 South, Range 7 West the Railroad Company still holds all of Sections 3, 9, 15, 17, 19, 21, 25, 29 and 31 and 420 acres in Section 1, 339 acres in Section 5, 521 acres in Section 7, 440 acres in Section 11, 480 acres in Section 13, 520 acres in Section 27, 440

acres in Section 33, and 600 acres in Section 35.

A. I think you made a mistake.

Q. Now, from the green markings on the map, Mr. Keller, isn't it a fact that these descriptions I have read here include practically all of the railroad lands that they obtained under the original grant as shown by the markings on the map?

A. Yes, sir.

Q. What is the character of the soil in these lands, Mr. Keller?

A. What is the character of the soil?

Q. Yes, the general character of the soil.

A. In which way?

Q. Is it a clay black loam, or what?

A. Oh, its composition! Well, it varies.

Q. Please state the kind of soil.

A. Some of it is sandy. Some of it is dark loam. Part of it is clay.

Q. Is it a productive soil, or are these soils productive?

A. They are.

Q. What do they raise on them?

A. Well, the people that live on them, they raise most anything they want to grow—fruit, berries, grains and gardens.

Whereupon, upon recross examination, witness tes-

tified that some of these railroad lands were pretty rocky in that twelve miles square, and to a certain extent were tolerably steep. The country south and west of Dillard, going over the ridge to Looking-glass, south of Olalla, is pretty rough in there; that is, in that other township, though.

Q. Well, practically more than half of these railroad lands are rough and sort of mountainous?

A. Well, they ain't all level, sure.

Q. How?

A. They ain't all level.

Q. No, they are not level like this floor here?

A. No, not by a long way.

Q. Pretty steep and rocky in places?

A. Yes, in places they are."

In some places there are south hillsides that are practically without any soil, but have a little grass in the spring, that burns out by the first of June. The north hillsides that have oak grubs on them, or shrubery of that kind, have a better soil. As a general thing, the better the timber, the better the soil, the more there is on it. Some of these lands have saw timber on them. Dillard is a very small place, with a postoffice, station and two warehouses, and has a store, hotel, and several dwellings around there. There is no sawmill there now and no manufacturing. There is a prune dryer there. At Dillard and around there, there are some pretty good

prune orchards in the valley.

Whereupon, upon redirect examination, witness testified that it is generally an agricultural country around Dillard there.

Whereupon JOHN NEUNER, called as a witness on behalf of complainant, being duly sworn, testified that he is thirty-one years of age, resides at Glendale, Douglas County, Oregon, and has lived in Douglas County, Oregon, about eighteen years, practically ever since he came to Oregon. He was a farmer, engaged in grain farming—general farming—for about fourteen years on the Umpqua River at a place called Day's Creek, situated in the Umpqua valley on the South Umpqua, in sections 2 and 9, in township 30 south, range 4 west. They raised all kinds of small grains, small fruits, and all kinds of stock that are generally raised in that particular country. They farmed mostly on bench lands there in Day's Creek. Bench land is land that is lying on a higher raise than that of the lower lands. The lower land through there is called bottom land, and then farther back on the next raise is the bench land. They also farmed some of the hill land. It is quite high up on the slopes. The bench lands are not as a rule necessarily level; they are also siding and sloping, some slope quite abruptly. Quite a per cent of this land was timbered when they went there. They cleared up a good portion of it, perhaps, on the entire tract, about one hundred acres. They farmed about six hundred acres there—quite an extensive farm

for that country. He was farming with his father, George Neuner. Referring to "Defendants' Exhibit 259," he is more particularly acquainted with the land in townships 29 and 30 south, ranges 3 to 7 west, and that portion lying south for two townships on ranges 3 to 7 west, inclusive. That would include townships 30, 31 and 32 south, ranges 3, 4, 5, 6 and 7 west, in southern Douglas County. He has been over about every quarter of that country. He is thoroughly familiar with it, has been over it for the last six years, more or less all the time. He has cruised a good deal of that land in there and has had also a little real estate experience in through there. He is in the livery business, too. He has been over that land a good deal, with timber owners, and also with farmers, etc., small farmers and stock raisers. In his opinion, eliminating the yellow lands which were never owned by the railroad company, and the blue lands which have been sold by the company, 75 to 80 per cent of that land, especially the railroad sections marked in green in township 30 south and the ranges mentioned by him, could be used for agriculture in the broadest terms, meaning by broadest terms, stock raising and the general pursuits of agriculture. That is, after the timber is off, 30 to 40 per cent of it could be made suitable for cultivation. About 70 per cent of township 31 south, ranges 3 to 7 west, of railroad land would be fit for agriculture, and about 25 to 30 per cent for cultivation. About 80 per cent of township 32 south, ranges 3 to 7 west, would be fit for settlement, and about 30 to 35 per cent of it tillable. There are settlers

or farmers residing on lands adjacent or contiguous to the railroad lands and of the same general character, and that applies to all three townships that he has mentioned. In his opinion, 75 per cent of that land in township 30 south, ranges 3 to 7 west, if it were divided into legal subdivisions of one hundred and sixty acres each, would support families, and about 70 per cent of township 31 south, ranges 3 to 7 west, would be suitable for that purpose and could be utilized by a farmer to earn his support. It is a little rougher, the hills are a little higher. About 75 per cent of township 32 south, ranges 3 to 7 west, could be so utilized, meaning in each case that if a man would go on a hundred and sixty acres of it as a homesteader, it would be suitable for settlement purposes. There are people living on one hundred and sixty acres of land in that vicinity, making a living there and earning a support.

Q. How long have settlers been in this area of this country? I am eliminating now the lands that were lost to the company by reason of prior entries and land grants, as noted on the yellow field in the map.

A. Well, that country has been a good deal of it, a good portion of it, has been settled ever since I came to the country.

Q. Mr. Neuner, in your opinion, what has been the effect of the Oregon and California Railroad Company's failure to fulfill the conditions of the grant, and sell to actual settlers in 160 acre tracts?

Q. I will add, in this area that you are acquainted

with?

A. Why, to the best of my knowledge, and which I think I have a thorough knowledge of, it has greatly retarded the development of that country, in the way of keeping people out that were looking for homes. A great many people were looking for, have been for the last six or seven years, to my knowledge, have been looking for homesteads, and they cannot be secured, because the Government land that was there was taken up during the timber rush by outside speculators, and consequently that did not leave very much Government land; and that that it did leave was so far apart that it was difficult for people to get in there with families and get schools and roads.

Whereupon witness testified that a good portion of this area contains more or less timber all through it—it is called a timber country. From his knowledge of this general country, as he has observed it, it was, in its original state, practically all a timbered country to a more or less extent, and the lands back on the benches and slopes required clearing generally in that country before they could be cultivated. But the creek and river bottoms were, to his knowledge, cleared. The area covered by the creek bottoms, as compared with the lands now in cultivation in that country, is small. The country was developed by the people going in and settling on these lands in that community, clearing them up, and following it with general farming and stock raising. The first settlers occupied the bottom lands, and that was the

easiest to clear. That would naturally follow in any country. Settlement has not progressed very much as time has gone on. As he stated once before, the timber—pretty much of it—pretty much of the land was taken up by the timber speculator, and what little there was left was settled to some extent where it was accessible to roads and schools. But there being so much of this railroad land held up made it difficult for them to get schools—ordinary school, church, etc. Farming has extended up farther into the hills and valleys as time has progressed. He knows of lands occupied, adjacent to railroad lands, of the same general character, which have been used for farming purposes, from which farmers earn a support for themselves and families residing on the land.

Whereupon, upon cross examination, witness testified, that he is in the timber business to some extent, and has made timber locations for a few people in Douglas county. He located nearly all people that came in from Spokane, largely Spokane people—a few. These so-called locators were men who were seeking to buy timber quarters under the Timber and Stone Act. This was about six years ago. The first rush for timber was about twelve years ago. People took up timber lands largely through this particular section, a great many Eastern people. They did not take up homesteads so much at that time, they got it through the Timber and Stone Act, and he presumes they also began to buy railroad land about that time, twelve years ago, in the timbered area. Some of the timber people that bought

some twelve years ago and since in Douglas County, to his knowledge, are the Myrtle Creek Lumber Company, which bought quite a large area of land up there, and W. P. Johnson. There are a large number of timber holdings in that county, large timber holdings.

Q. These timber lands that were taken under the Timber and Stone Act, and a few under the Homestead Act that you know about, were they good timber lands as a rule they got, about as good as they could get?

A. Yes, about as good, naturally.

Q. About how many million feet to a quarter section is considered a good timber quarter, good average timber quarter?

A. About 3,000,000, an average.

Q. Have you any judgment as to what these unsold railroad lands would average in the timber holdings, taking now the timber-lands, and excluding the bald hills and the foothills where there is no fir timber.

A. Excluding the bald hills?

Q. Excluding the bald hills, and excluding the bare hills and the hills covered with brush and with oak grubs—small brush as you have there in that country, and including the pine and fir and cedar and hemlock and spruce, and such timber as is commonly called saw timber, about what would be the average, in your judgment, of these timber-lands per quarter section?

A. About 3,000,000 feet.

Q. Now, what is the best stand of timber that you,

as a cruiser and a real estate man, and as a citizen of Douglas County, familiar with these matters, know of in Douglas County? About the largest stand per quarter section.

A. In that area that I spoke of, about 6,000,000 feet would be considered the best—among the best.

Whereupon witness testified that the highest price of such a quarter section, within his knowledge and observation, would be about three thousand dollars. He would figure that the stumpage would be about fifty cents. Land has sold at a higher stumpage in some of the more favored quarters, and as high as a dollar in some parts, depending upon accessibility to logging streams or convenience to transportation of some kind. If a man could get a dollar, or if they sold it at the rate of a dollar a thousand, and it carried six million feet, that would be six thousand dollars for a quarter. Most of his locating people on these timber claims was done by other people, he merely got the cruise, looked over the land for them, and the timber for them, and they usually brought them in, and these other people would give him about half of what they would charge; that is, a timber locator would come to him and say, "I have a customer now, and I want you to cruise the land, and I will divide with you the charge, whatever we get." They did not get as high as two hundred and fifty dollars a quarter, about two hundred dollars was about as high as they got.

Q. Did you ever locate any of these so-called actual

settlers that Leavengood and others found out there in Douglas county and brought some of them from the east?

A. No.

Whereupon witness testified that he located no one who used blank forms and made tenders to the Company for railroad land. He had nothing to do with and knows nothing about that. He heard that these people charged fifty dollars, but has no personal knowledge of that.

Q. Did you ever see any of these notices on these railroad quarters, where these actual settlers had posted notices that they claimed it under this Act?

A. I think I have noticed some of the notices, yes, sir.

Q. Did you ever see any cabins where they have built shake cabins, and put a little bedding in, and a stove?

A. No. No, not that I know of.

Whereupon witness testified that there were not very many in Douglas County, within his knowledge. That began about five years ago, after withdrawal of the lands in 1907, 1908, about the time that the Legislature adopted a memorial in 1907, asking Congress to forfeit this grant.

Q. Then the whole country began to look for these timber lands, didn't they?

A. Yes, there were quite a good many through

there, to my knowledge, a good many people moved up on this railroad land.

Q. Yes, they all thought they were going to get the land right away.

A. Well, not so many. A good many wanted to get the more favorable places to make homes of it.

Q. Well, some times there were four or five tried to get the same quarter section?

A. Well, not to my knowledge.

Q. Well, those people that moved in have moved out again, haven't they?

A. Yes, they have moved out now. Well, not all of them. I know of some that are still there yet, cultivating the soil.

Q. Farming some of the railroad lands?

A. Yes.

Whereupon witness testified, that to his knowledge there are two men with families farming this railroad land. They are at Day's Creek, and have built houses there—improvements, house, barn, outbuildings. One of them is in section 35, township 29 south, range 3 west, and his name is C. N. Wood, and he has cleared about twenty-five acres and the balance is brush and timber, and has a little saw timber on it. The other man is Jesse Tiller, who has about thirty acres cleared, the balance of the land that he claims is oak timber, this oak timber is not very valuable down there. It is not saw timber, it is not just oak grubs, and has no commercial

value excepting for wood. There is not much saw timber on this quarter. These men did not offer two dollars and a half an acre to the Company and then go and settle on the land. They wanted to buy it, to his knowledge—at least they told him so. They offered to buy it of Eberlein of San Francisco. One of them has been there for about six or seven years, has a pretty good house, barn, outbuildings, fences. Witness does not know whether the man is taking chances as to whether he can get title or not, and does not think the man has any contract with the railroad company—does not know whether he has or not. The nearest postoffice to them is Day's Creek, which is just a postoffice. A good deal of this land he is speaking of now that he has been over there, is on Day's Creek, which flows into the Umpqua river at a point eight miles east of Canyonville; the other lands that he was talking about. Cow Creek runs up through there, and the railroad runs along Cow Creek from Riddle to Glendale. The country is very rough right through where the railroad runs—very rough. The railroad lands there in sight of the track from the train have not been logged very much, it is not good timber, it is rather poor quality right along the track there. Those hills on either side, the land is not very good—not along the track, and this condition extends either way from the railroad a quarter of a mile, and when one gets away that distance there is pretty good land—plateaus and timber, land and timber—fir, pine and cedar. There is some little mining in that section, largely placer. Cow Creek Canyon is one of the

worst and most rugged mountain canyons in western Oregon, to his knowledge. The land that his father is on is a Donation claim. It is the Donation claim, he thinks, of John Day, who settled along in the fifties, and was one of the oldest places in Douglas county. Of the six hundred acres of that land that they had when they went there, there was about five hundred acres clear, and that is pretty good farming land yet. They raised grain and stock—they hauled out a great deal of the grain to the railroad. They are not there now. He doesn't know in regard to shipping conditions of grain now, and does not know that they are shipping flour from the Willamette Valley and eastern Oregon into southern Oregon today to feed the people. They used to raise a good deal of grain in the Umpqua Valley, and those warehouses at Dillard and Riddles all carried considerable grain in the early eighties. They raise a good deal of grain yet in Cow Creek and Umpqua Valleys and ship out a good deal. Some of it is milled in the county, and some of it is shipped out yet, to his knowledge. He does not know whether it is shipped out of the County, but it is shipped to various parts of the County, it might be to some mill in the County. He does not think, generally, that there is as much grain raised in Douglas County as there was twenty years ago.

Whereupon, upon redirect examination, witness testified, that they are devoting their lands that were formerly in grain, a great deal of them, to diversified farming in Douglas county, and there has been a good deal of subdivision in that section. There is a tract at Suth-

erland that was quite a large farm at one time, north of Roseburg, that has been subdivided and sold. In making his estimates on the amount of this land that is agricultural land, that could be tilled and which is suitable for settlement, he has taken into consideration the rough lands mentioned in his cross examination. Six million feet of timber on a quarter section is a very large stand of timber for that area. It is the best through there. This timber is not one big dense forest.

Q. Please describe, in your own language, the way the timber lays there.

A. It is considered a timber country, because there is oak grubs and oak through there; but nearly all the southern slopes, or a great portion of the southern slopes are covered with this oak grub, and also open draws, especially in the draws a good deal of this land is open, and the northern slopes are more or less covered with heavy growth of timber, fairly heavy; and also some of the western slopes, a good many of the western slopes are burns—areas that have been burned over. The wind has some time or other come in there and blown down a great many of the trees, and then fire caught them.

Whereupon witness testified, that these burns and draws and other open places he has mentioned are lands that would be suitable for cultivation—farming and ranching there, they clear up the land largely by stock, and it does not take so much of that land there to support a family. Twenty acres of that land there would support a family, and they can devote the rest to graz-

ing. These people who came in from Washington and filed on Timber and Stone claims were not people looking for agricultural lands to settle on. They were speculators purely and were looking solely for timber. In some instances, these people took up lands under the Timber and Stone Act that contained little or no timber. There was a wild rush about that time to obtain timber, people became over-excited over the subject of timber. There is a considerable area in these railroad lands of which he has testified that contains no merchantable timber, that would be suitable for agricultural purposes—that is, for actual tillage of the soil, and he would say that about 30 per cent of it which contains no merchantable timber could be rendered suitable for cultivation.

Q. Now, Mr. Neuner, if the Railroad Company were to open up these lands, and sell them to actual settlers, or if they should come into the hands of actual settlers, men engaged in farming, in your opinion, would that assist the people in Douglas County in raising a sufficient amount of grain to supply the demands of the community?

Do you understand the question, Mr. Neuner?

A. Yes, sir. I would say that it would. But Douglas County, if I may state that?

Q. Certainly.

A. Douglas County, especially southern Douglas, is given up to diversified farming. There is a great deal of dairying through there now, fruit raising, poultry

raising, and that way it would materially develop the country.

Whereupon, upon recross examination, witness testified, that he had cruised one of these railroad sections at West Fork. He made an application for section 11, township 32 south, range 8 west, about five years ago to the Company, and applied to buy it. He cannot recall the cruise, but it was light, it was about eleven million as near as he could say. He wanted it for milling purposes. The Company told him it was not on the market then, but if they should sell it he would get the first chance at it, and the Company did not sell it to him. It was fir timber, about a quarter of a mile from the railroad near Glendale, West Fork.

Whereupon, upon redirect examination, witness testified, that he never made an application to purchase as a settler, with the intention of settling on the land. The railroad company did not, to his knowledge, sell any of that land to those people that he has spoken of as having lived on railroad land, farming it. He applied for the entire section of railroad land mentioned. It was not farming land, some of it could have been agricultural land when the timber was removed, and he had land value in his mind when he applied to purchase it.

Whereupon, upon recross examination, witness testified, that he had both the timber value and the land value in mind when he applied to purchase. One of these men who went on to this railroad land, these two

farmers that he said were cultivating it now, one went on about six or seven years ago, and the other went on about five years ago. He thinks they went on just before 1907. There was no agitation about it before they went on to his knowledge.

Q. Did you know about this $2.50 an acre clause in this Act of April 10, 1869, or did you hear about that before that?

A. I heard about it, yes. I knew that they were selling at that when the land was still on the market.

Q. Well, did you know that this clause in the Act of Congress of April 10, 1869, that they claimed that the company had to sell it to actual settlers at $2.50 an acre? Did you know about that?

A. Yes, I knew about that.

Q. Now, that is a matter that was known in Douglas County a good many years ago, wasn't it?

A. Well, I dont' know whether it was known generally or not. Those people that followed that line of work—they were acquainted with the conditions?

Q. People who handled real estate titles were pretty familiar with that claim that was made before this late agitation in 1907, weren't they?

A. Well, I was. I don't know in regards to the others.

Q. Don't you know that the question was a matter of common discussion among attorneys of southern Ore-

gon for as far back as 1896?

A. I didn't know that.

Q. You didn't know that yourself?

A. No.

Q. Do you know that it was made a question in a Jackson County tax case in 1896, when Judge Watson was representing Jackson County in that litigation over the taxes in Jackson County?

A. I didn't know that.

Q. But you knew it before the Government commenced this agitation?

A. Oh, yes, this recent agitation.

Whereupon witness testified, that these two families living out there were not on quarters; one of them, Wood, has forty acres, and the other man has eighty acres. The forty acres would be worth perhaps about fifty dollars an acre, and the eighty would be worth about a thousand dollars. He does not know whether the railroad company is paying the taxes on it and these men are getting the benefit of it. The eighty acres lies on top of a mountain called the Bland Mountain, that is why the value would not be so great. On a straight line, these places are about two miles apart. That on the mountain is worth about twelve to fifteen dollars an acre. It is not worth as much as the other forty. The man is making a good living there. The forty acres is worth about twenty-five dollars an acre,—about $1000.

Whereupon, upon redirect examination, witness tes-

tified, that if the railroad company would sell to these men at two dollars and a half an acre, or at such price as these men were willing to pay, the company could relieve itself from the payment of taxes on these lands.

Whereupon H. J. MILLER, called as a witness on behalf of complainant, being duly sworn, testified, that he is twenty-nine years old, resides at Oakland, Douglas County, Oregon, and has lived in that county about seventeen years. At present he and his father are in the manufacture of black oak wagon material. Prior to his going into that business, he worked in the woods considerably; he also did some locating, and ran compass for several different cruisers—acted as compassman for timber cruisers. He is somewhat acquainted with the farming conditions in Douglas County. He worked on a ranch when he first came to southern Oregon for a couple of years, and has had actual experience in farming—has farmed some. He has located people, that is, he took them out and showed them the land, ran out the lines. These people were desiring to make entry of public lands, both homesteads and timber claims, timber and stone applications. He would think, from the appearance of these people who generally desired to file a timber and stone application, that they were people that were fairly well off, that were city people usually. He would think that the homesteaders were a poorer class of people, men looking for homes who desired to engage in the pursuit of farming or ranching. Referring to "Defendants' Exhibit 259," he is familiar with townships 23 to 25, both inclusive, ranges 3 to 5 west, both

inclusive, and has also been in township 23, 2 west. He has been over a great portion of these lands personally and knows the formation and the growth that are on them, and the character of the soil. He would think, as a whole, that 30 to 35 per cent of the land in this area could be rendered suitable for cultivation. The land in these townships is pretty generally the same, unless it is back in township 23 south, range 3 west. There it is more mountainous land, but he does not believe the percentage of that land there that could be tilled would be less. It might be a little less, perhaps, but taking it as a whole, he thinks 30 per cent of it would be about right. Generally speaking, if these lands were divided into a hundred and sixty acre tracts, this average would hold good as to each tract. There might be a hundred and sixty acres that did not have that much—that had practically no farming land at all, while other places might be almost all tillable land. There are lands in there similarly situated that are cultivated, that is, lands that have been timbered. There are settlers in that country that he has described with whom he is acquainted. They raise hay for their stock and garden stuff and some fruit. He thinks that one could raise hay on these lands, most any kind, fruit, garden truck of any kind. Speaking of hay, he means oats and vetch. Vetch is a pretty good crop. Wheat and oats are used as hay in that country. They raise potatoes, cabbage, corn; fruits grow on these lands—apples, prunes, plums, berries, grapes. The size of the tracts cultivated by the settlers in this area in the vicinity of the railroad lands, or on

lands of a similar character, depends, of course, on how much of a place they have. Lots of those fellows in there have big ranches, but they farm from ten to thirty, forty or fifty acres, ten to fifty acres he would say. These farms were generally timbered in their natural state, but they have slashed the brush and burned it, and they have been pretty generally cleared.

Q. Mr. Miller, in your opinion, what has been the effect of the Railroad Company's failure to comply with the conditions of this grant, and in failing to sell the land at $2.50 an acre to actual settlers in tracts of 160 acres? What has been the effect of that failure to comply with these conditions upon the community there?

Q. Go ahead and answer.

A. I think it has kept back settlement and retarded the development of the country.

Q. Are there many demands in your community for homestead lands, people want them to settle on?

A. Yes, sir.

Q. And actually engage in agriculture?

A. Yes, sir.

Q. Are you able to find any open Government lands?

A. No.

Q. Have they been entered?

A. All the desirable ones.

Whereupon, upon cross examination, witness testi-

fied, that he lives at Oakland, Oregon, and is twenty-nine years old, and commenced to locate people on timber lands about ten years ago. To do that, they take them out and find the corners, and show them the land in general, and their fees were usually from one hundred to two hundred and fifty dollars. They never cruised a claim for the man to see how much timber he was going to get approximately. The man was his own judge, usually, whether the quarter was desirable or not. A man could tell pretty well, he thinks, when he looks over a quarter, about what it would run, just by looking at it in a general way. As a locator, he has had some experience in cruising parties, and when he was commissioned by a man to go out and get a timber quarter, he exercised his best judgment, but showed him the land and told him about how much he thought it would run. Having experience with cruising parties and having been in this timbered country for a number of years, he could tell pretty well, approximately, if it would run one million or three million feet to the quarter section; and acting upon his judgment—the party relying somewhat upon that—with his own eyes looking at the corners and running through the timber, the man decided whether he will locate and pay the price. If the man does not take the quarter, he doesn't get any fee for his work. He tried to get a quarter that would be acceptable. He does not know how many of these quarter sections he has located in the last ten years in Douglas County, in these timbered lands, but approximately he would expect that he has located twenty-five or thirty

quarter sections, and of these twenty-five or thirty, he would guess that eight, ten or a dozen were homestead claims.

Q. Did these homestead claimants find satisfactory quarters that you showed, that had good timber on them —these eight or ten, did they take the claims?

A. They took them, yes.

Q. Did you find pretty good timber for them on their quarters?

A. Well, some had timber and some quarters did not have any to speak of.

Q. Some quarters did not have any timber on to speak of?

A. Not of any commercial value.

Whereupon witness testified, that there are not very many open quarter sections of Government land in that country worth taking that are left.

Q. That is what I mean. There are some open quarters on bald hills and rocky points that probably nobody would take except for pasturage? Isn't that true in some parts of Douglas County?

A. Yes, some parts of it, it is.

Some of the vacant land there, perhaps, is practically worthless for timber or for anything excepting it may be for pasture—summer pasture. The average stand of a quarter section in Douglas County would be six or seven million feet—that is not the average, the average,

he would say, would be "three million—two and a half or three million feet." These timber claims that he located he thinks would average about three million feet. These railroad lands he says are about 30 per cent agricultural or tillable, or could be made agricultural or tillable, on an average, taking it all over, he means would become such after the timber and brush has been removed or cleared. These ranches that he said were big ranches are stock ranches. They are on the Calapooia, on the headwaters of the Calapooia. These big ranches were taken at a very early date, usually those large ranches were taken in early days, and they were donation claims. Some of them, he thinks, bought additional quarters, he presumes that they bought the land of the original purchaser. Some of these large holders, he thinks, were people who bought from the railroad company for pasturage, or something of that kind, adjacent to their regular holdings.

Q. Well, now, they then got the better part of the railroad land, so far as it being available for agriculture or for grazing was concerned, didn't they, those that bought first?

A. Yes, it was added to their holdings, I presume.

Q. Well, that was only in the last seven or eight years that these railroad lands that are unsold came to be sought after for timber? Isn't that a fact—the last eight or ten years?

A. Well, I don't know how long it has been.

Whereupon witness testified, that the timber demand became active about twelve years ago, he thinks, and the market was most active, timber was at its highest demand, about six years ago, he thinks, about 1906, and he believes it continued through 1907 and on down to date with more or less activity. He applied to purchase some of the railroad timber lands. He gave an attorney ten dollars, and he sent it in, put in an application for him. This was Mr. Dimick of Portland, who was then at Oakland. He does not remember whether he signed a printed blank application or not, but did whatever he was told to do. He does not remember if he offered to pay, in the application, two dollars and a half an acre, that is what they understood they were to pay—that it could be bought for that. He did not select the quarter section applied for and he never saw it and he has forgotten what section it was in—part of it was on Smith River. It was in that dairy country, on the headwaters of the Smith River. He thinks there was some saw timber on this land—there was good land on it, too. He had never been over it before he selected it, but talked with a cruiser that worked in that country who said he had been all over it and said it was good land, and told him it was good timber. He doesn't remember what the estimate was, he doesn't know positively whether it was very good or not because he did not see it. The cruiser told him that he had better take it. He has forgotten the name of the cruiser and does not know where he lives. He never went out on these lands and settled on them. He worked as a compassman for cruisers, with

a cruising party—he thinks that Roach is the name and that is the company that is paying taxes on the lands. He thinks it is a large timber company, a Spokane company. He worked as a compassman for the cruisers of that company a couple of weeks. He also worked for a man by the name of Ghormley. He has not cruised any of these unsold railroad lands. He worked a couple of weeks for Ghormley, and he has forgotten who Ghormley was working for. They were individuals cruising timber lands.

Q. Now, you say there were some of these settlers in this general territory that you have described, or on some of these lands in the even sections, and they have small parcels cleared. I suppose you mean they have got all the way from an acre up to twenty-five acres, depending on the length of time they have been on their homesteads or their lands, whatever it is.

A I spoke of the ranchers, didn't I?

Q. Well, do you mean ranchers that have been there a good many years?

A. Yes.

Q. Oh, ranchers that made early settlements in there?

A. Yes, ranchmen and homesteaders.

Q. These ranchers some of them have been there 30 or 40 years, haven't they, up those streams?

A. Some of them, yes.

Q. Some of them have been there, took land under

the donation law away back in the early days?

A. Yes, sir.

Q. They are the people that you referred to?

A. Oh, no; I referred to homesteaders.

Q. Well, some of those homesteaders have settled in there as far back as 1862.

A. I referred to homesteaders, if I remember right, as having approximately 10 to 50 acres.

Q. They have been there 10 to 40 years, some of them, haven't they?

A. A great many of them have. Some of them have not.

Q. They are mostly on streams or little valleys on the headwaters, and some of those streams, aren't they, those you speak of?

A. Some of them are, yes.

Q. Most of them are, are they not?

A. Yes.

Whereupon witness testified,

Q. Did you ever see any abandoned homestead cabins up in the woods where there were people who had apparently made final proof and left their shacks and gone away?

A. I have seen some, yes. I guess they were homestead cabins, they were cabins at least.

They were cabins on timber quarters and they were

not occupied and had not been for years, according to the way they appeared, and might have been hunters' cabins, or trappers', so far as he knows. He does not know whether they were really hunters' cabins or not, and he doesn't know that all of them were old abandoned cabins that people had formerly built there on these lands to take them up, some of them were. They were not occupied at the time he saw them, and had not been for years, and were rotting down and abandoned.

Whereupon, upon redirect examination, witness testified, that there are extensive clear bottoms along some of the streams where the settlements are on the streams in the vicinity of these railroad lands. These bottom lands are as good lands as they have anywhere. Usually it was heavy timber originally. There are some benches through these mountains that settlers are living on.

Q. Now, you spoke of the abandoned cabins that you knew were homestead cabins. How many of those cabins have you seen that you recall, that you actually know have been homesteads, and used merely for the purpose of obtaining title to land under the homestead law, with the purpose or intention of abandoning them?

A. They were deserted, you mean? They were put there and did not expect to prove up, do you mean?

Q. They were put on there merely as a make-shift to obtain title to the land from the Government?

A. Well, I don't know of any that were put on there with those intentions. I don't know what their in-

tentions were, in fact.

Q. Well, how many abandoned cabins have you seen on claims that you knew were obtained from the Government by homestead entry, that you know had been homesteaded?

A. I don't know more than four or five.

Q. How many settlers who were actually living on their homestead, and making a living from the land, do you know in the vicinity of these railroad lands?

A. I know lots of them.

Mr. Fenton: Homesteads you are speaking of?

A. Homesteads, yes, sir.

Q. Were the lands that are farmed in this community generally timbered lands prior to being put under cultivation?

A. Well, part of them were. Part of them were not.

Q. What were not?

A. It was a prairie; always had been, I guess.

Q. Where is that prairie located, or are there different prairies?

A. Oh, yes, there are different prairies. There is prairies all over, quite often run into a prairie in the woods, you know—open land.

Q. What is their condition?

A. It might have been an old burn, you know.

Q. Is that a general condition throughout this section of the country?

A. Part of it, yes.

Q. Does it extend into these railroad lands? That is, do you find any of the prairies in these railroad lands that you are acquainted with?

A. Yes, sir.

Whereupon O. M. CARLSON, called as a witness on behalf of the complaintant, and being first duly sworn, testified, that he is thirty-five years old, resides at present in Brownsville for the last year, lived in Oregon since 1900, and has lived in Township 15 South, Range 3 East of the Willamette Meridian, in that neighborhood. Most of the experience in farming that he has had was that he took a homestead there and cultivated it, and part of the time he worked out in the timber and for farmers. His homestead is in Township 15 South, Range 3 East, in Sections 24 and 25. He had farmed prior to that time. He was born and raised on a farm in Sweden. He lived on his homestead until a year ago last fall. He was up in that neighborhood. He got married then, a year ago last fall, but he was single all the time while he had his homestead. He had about four acres under cultivation on his homestead, planted a garden and potatoes, and had the remainder of it seeded in grass. Referring to Defendants' Exhibit 259, from Brownsville up the river, he has been up clear to Crawfordsville, to the headwaters of the

Calapooia, as shown on this map, extending up to Township 15 South, Range 4 East. He has been through from over on the Mohawk from Springfield, all through the Mohawk. From Springfield all through there, through the Mohawk country; he has been on that and through from Crawfordsville over to the Mohawk to Marcola. There is Marcola and Wendling also, and part of McKenzie, from Springfield up to Thurston, Walterville, Leeburg and Vida or Gate Creek, what they really call that, and as far up as Blue River, which is on the McKenzie. He has been up to Leeburg there, south of the river, where he has been working. A considerable portion of that land in there is owned by the Booth-Kelly Lumber Company, who purchased it from the railroad company, as shown by the blue markings. He has a general acquaintance with the lands in the vicinity of Mabel, and general knowledge of the lands in Township 15 South, Range 1 West, north of Mabel, and is acquainted with the lands in Township 17 South, Range 1 West, and that vicinity. He has also been over in there at Camp Creek. The lands up the McKenzie in Township 16 South, Range 2 East, are above Vida, above Gate Creek, some call it Vida. Gate Creek is not marked on the map, and is located in that township and he is acquainted with the southern part of Township 16 South, Range 1 East. He has been over that country, working on the Mohawk, and working on the McKenzie, and traveled through that timber on the trails. He went over there and has been hunting over in there a good deal, and the general character of

that land in that country is pretty well timbered, and some openings, some burned off a good many years ago. He is acquainted with the farming conditions in this section of the country, and the lands that are farmed successfully. In his opinion eighty per cent of these lands could be rendered suitable for cultivation; that is, suitable to plowing and raising crops by cultivation, after the timber and brush have been removed. There are lands in that vicinity of the same character as these railroad lands which are farmed; and these farms are occupied by settlers living on them. He has been out over some of these railroad lands; he was out there one year with some timber cruisers of the railroad company and they told him they were railroad cruisers, but he never found out what company they were cruising for. In his opinion the unsold lands of the railroad company would be suitable for homestead purposes. Whereupon on cross examination, witness testified, that his homestead is on the West half of the northwest quarter of Section 25 and the west half of the southwest quarter of section 24, township 15 South, Range 3 East. His nearest post office is Blue River, in Lane County, on the McKenzie River. His homestead is closest to the railroad from Springfield and up on the McKenzie and then he goes from Vida on the wagon road that goes up to the mines. He passes through Vida, and his homestead is probably about 15 miles east of Vida, down on the Calapooia—the headwaters of the Calapooia, which runs into the Willamette at Albany. It must be about 30 or 40 miles from Albany, more than that to his home-

stead, about 50 miles from Albany; that is, it is about 20 miles up into the mountains from where he leaves the foothills and valley. He took his homestead in 1900. It is mostly saw timber on his homestead. He had never cruised it, or had it cruised. There may be a good 3,000,000 feet on it, for all he knows. It is principally fir, red and yellow, good standard saw timber and some hemlock. Hemlock is good saw timber where it is large enough and is used to make boxes and box shakes for fruit shipments, which is quite an industry in this country. He has about four acres of the 160 acres cleared, in one place. He did not find a clearing there when he started. It was not a burn, it was on the bottom, right on the Calapooia River bottom. It was covered with brush and timber, vine maple brush, the most of it. There was some saw timber on the four acres that he cleared, probably about six or seven big trees. He built a cabin on it and lived in the cabin, and when he went away to work he left his things in the cabin. He would go there and stay a few days and make a garden, and make a little clearing, and then he would go off to work and come back again, he lived there quite a little bit, but of course he had to work out for a living, he could not make a living on the homestead alone. He lived on it five years and kept up this method of working out and going back to his place. He left his bedding, stove and things of that kind in the house when he went away. He locked it up and did not leave anybody in charge. Some of the homesteaders did the same way and some of them were married and stayed on their land with their families,

they would go out and work and leave their families at the place, they had to do that to get started. It would take them, he should judge, two or three years to get started. He did not have any money to buy stock with until he got started there, and that was the reason why he did not raise stock and let them roam over the mountains, and make his living that way. He owns this quarter section still. He does not know of any land being sold in there. He does not know whether he could get fifty cents a thousand for it or not, he never offered it for sale. He has heard that the best timber had been bought there from seventy-five cents to a dollar a thousand, but of course that is all he knows.

Q. Well, if it was sold at $1 a thousand, your quarter section having about 3,000,000 feet on it, would be worth about $3,000?

A. Yes, I think it would.

He got married a year ago. There is no wagon road in there, and it was inconvenient to bring a woman in there, so he could not get in there as handy and live there as he did before when he was single. When he was single he could go through the mountains and on trails. That is a timbered country principally. Eighty per cent of that land could be farmed after the timber is logged off, and the stumps are either burned around or blasted out, and the timber removed.

Q. Well, Mr. Booth says that would cost from $50 to $250 an acre to do that, you know Mr. Booth, don't you?

A. Yes.

Q. Well, is that about what it would cost in your judgment?

A. Well, I don't suppose it would cost quite as much as that.

Q. Well, if a man did his own work it would not cost that much?

A. No, it would not.

Q. But he would be 30 or 40 years in clearing 160 acres of timber land if he did it by himself, wouldn't he?

A. Oh, he might.

He only knows of two homestead cabins up in that timber land where the people who took homestead claims had made their final proof, or had commuted and paid the cash and got the title from the Government and had moved away, these were timber lands and the parties proved up and still held the lands. It is good timber lands like his. They were not friends of his. He knew them, and they are both dead now. When they were proving up and living there, they left and worked out just as he did. They moved away before they died. They had the same kind of improvements and occupied them the same way as he occupied his. One was a married man and one a single man. The widow of the married man is still living, but not on the place, she has moved away. Whereupon on redirect examination witness testified, that one of these homesteaders who died, lived on his homestead until about five months before

he died. He was ill when he left, and had to be carried out of there, he left to get medical attendance. There are people still living there in that section of the country earning their support from their places or homes. He was a single man all the time that he had his homestead, and he did not consider his absence from home as being any inconvenience. If he had been a married man, he would have cleared more of his land and made it self supporting. He has noticed the difference between the single homesteader and the homesteader who is married as to the development of his homestead. The married man really makes that his home, and keeps it up in better condition to make a home out of it. A single man goes ahead and does as near as he can. He might not get quite as much improvements as a married man. He has noticed that a married man is more inclined to become a farmer than a single man who settles on a homestead, unless he marries and brings his wife on the homestead.

Q. Mr. Carlson, in your opinion, has the manner in which the railroad company has handled these lands, especially in selling to large purchasers, and in withholding from sale and refusing to sell, to comply with the conditions of the grant to sell to actual settlers in 160-acre tracts at $2.50 an acre, has that had any effect on the settlement of the community that you have been acquainted with?

A. It has been a drawback to the country, keeping settlers from coming in and settling up the country.

Q. This country is generally a timbered area, isn't it?

A. Yes, it is.

Q. Well, the people who are farming there, engaged in farming now, what were their lands in their native or natural state, originally?

A. Well, at one time in the early days, they was all timber.

Q. They had to clear their land before they could cultivate it?

A. They had to clear it to put it in cultivation.

RECROSS EXAMINATION.

Q. They settled first on the streams, and got creek bottoms, river bottoms, and what little cleared land there was?

A. Yes.

Q. Some of them took donation land claims up on the Calapooia?

A. Yes.

Q. A great many years ago?

A. Yes.

Q. They started out with a few acres already cleared, and then as they wanted to extend their farming, why, they would clear the little brush that was there?

A. Yes.

Q. And in that way, in the course of 50 years, they

got a few acres of plow land?

A. Oh, yes.

Q. Now, these settlers that you say, these homesteaders that you say that you know are still living in there, have they all proven up?

A. Nearly all proved up.

Q. They don't move away as a rule until they prove up, do they?

A. No.

Q. After they prove up, why, then they can go wherever they please. If they want to sell the land to timber people, they can do it?

A. I suppose so.

Q. Well, they do that if they want to, that is, timbered land, isn't that right?

A. Yes.

Whereupon on redirect examination witness testified, that they can sell, after they get itle, and they can do whatever they please with the lands, sell it or keep it. These settlers that he speaks of are still living there, they went on this land about the same time as he did, and have obtained their title. Whereupon on recross examination witness testified, that he was a single man and did not have any home, and he wanted a home and a place to stay. The timber was there and he could not very well get around it without taking the timber and ground together. He took it in 1900 and he did not

know of any timber that was being sold in Linn County very much. The Booth-Kelly people had bought a lot of timber around in all their section, he supposes about that time. He did not hear very much said about the fine timber up in that country at that time, and did not until later years. He did not go out anywhere else to try to find a quarter section that was all clear. At the time he took his homestead he did not know at all how much timber there was on it, but he thought it was pretty good timber. He went over it before he took it. He talked with timber people or his neighbors about how good the timber was before he filed on it, and they said there was timber on it, but they were there ahead of him. Any quarter section up there had timber on it.

Whereupon, on redirect examination, witness testified, that in 1900 timber had no value in that country, practically. When he took his homestead the fact that it had timber on it, did not enter into his mind, or influence him in taking it; the thought of it did not influence him in taking it. He would have preferred to have had land without the timber, that is, cleared land, with the timber off the land. If he had to do it over he surely would have the land and not the timber. There were no open lands open to homestead entry in 1900 below him. They were all taken up then. They went on the Government land and squatted there, and in 1901 the Government surveyed that township. He took the best land that he knew of for homestead purposes, and with the intention of making a home out of it. Whereupon on recross examination witness testified, that he

had made a home of it, he has not left it yet. Whereupon on redirect examination witness testified, that he moved to Brownsvile only a year ago (1911) and he made his proof in 1907. He lived there four years after he made his final proof.

RECROSS EXAMINATION.

Q. How much time did you work out during the four or five years that you claim you were living on your place?

A. Well, maybe half of the time.

Q. And the rest of the time where did you live?

A. I lived on the homestead.

Whereupon JOHN THOMAS DEADMOND, called as a witness on behalf of complainant, being duly sworn, testified, that he was born in Lane County, Oregon, in 1854, and has lived in that county almost all of his life. He was born on a farm about three miles north of Eugene City. His father had several farms, and at that time he had three hundred and twenty acres in the valley—an old donation claim. He worked on his father's farm until he was about seventeen or eighteen years old, and he farmed near Harrisburg, Lane County, in the northern part, next to the line, for three years, besides the work he did on his father's farm. He is running a rooming house in Springfield at the present time, and after he quit farming he was a contracting logger, commencing about 1877. There are different ways of farming—some raise some kind of grain, small grain, vege-

tables, fruits, stock raising. In other ways than from his own actual experience, he has come in contact with the farmers and has become acquainted with quite a few methods of farming lands and the crops that they raise on them, and is acquainted with the productive soils of that country, that will produce crops, and with the character of the lands that can be cultivated and tilled. He had a farm—his wife owned it. He bought a piece of railroad land in section 1, township 17 south, range 1 east, of seventy some odd acres. He does not remember just exactly whether he paid three or three and a half an acre for that, it has been sometime since he bought that land, but it must have been about 1882 or somewhere along there. Of the crops produced in the farming industry in Lane County, there is wheat, potatoes, vegetables of all descriptions, grain, hops, garden products. The land cultivated there where these products are raised is of different character, there is a dark heavy loam that produces well, some grain and hay, and there is a sandy soil which produces vegetables of all descriptions—bottom lands, and there are hill lands which produce fruit and vegetables of all descriptions. The land that he bought from the railroad company was largely timbered, some brush in places—mostly timbered when he purchased it. He farmed it after he cleared up the land, and made a home there and lived on the place. That was in township 17 south, range 1 east, and he thinks the Booth-Kelly Lumber Company has land right adjoining that. They have timber—timber lands in there. He earned a support from this land which he purchased

from the railroad company. He did not have very much when he went there. His family consisted of one boy, three girls, and his wife. He does not know the altitude of this land. The railroad land which he bought was in the northeast corner of section 1. After he cleared this land he raised most anything that he wanted to there—garden, oats, wheat, hay, or anything that he wanted to plant, including fruit. This particular place that he is speaking of now that he bought from the railroad company—Mr. Albert Ward has that place now and is farming it—is still used as a farm. Witness cut a good deal of timber off of this place, and cleaned it up. When he was on the place, he cleared about eight acres, put it in cultivation, and brushed off and seeded down about twelve acres more to grass and made a pasture out of it. Since then this has all been grubbed off, they have cut all the timber down and grubbed the stumps out, and made a farm of it, it is not all cleared, he does not know exactly how much of it is cleared. Part of this land in that territory is called hill land—bench land or bottom land, some of it is bottom land. There is a distinction between hill land and bench land. When one gets up on the bench land it is more heavy soil, of a different kind of clay a little, and it is flat, and then there are benches that go up, and so on back—terraced. There is a bench there that produces just as good grass as the bottom land, and there is some of it produces better fruit, while the bottom land is better for vegetables, for hop purposes, or such as that. Referring to "Defendants' Exhibit 259," he has been down around

Springfield, Thurston, Walterville, Leeburg, and there is Vida in there somewhere, which is at the mouth of Gate Creek. He does not know as he could tell exactly the township of these green lands, that is, of the territory with which he is acquainted. He was in section 1, township 17 south, range 1 east, right on the north side of the river, somewhere about three miles—probably three and a half miles by wagon road, to Leeburg. He does not know the distance straight through, and in fact he has been all over this territory, all over these tributaries, hunting and fishing—he has roamed all around.

Q. Sufficiently to acquaint yourself with the formations of the land and the soil, and its adaptability to cultivation?

A. Partly, yes. I have noticed quite a little bit of the timber and everything else.

Whereupon witness testified, that he had been in most all of township 16, has hunted in township 16, range 1 east, and 17-1 east, and also in 18-1 east, from the summit of the mountain, from Fall Creek on both sides of the McKenzie River. He has been in township 16 south, range 2 east, in the vicinity of Vida, and is acquainted with the lands in that township. He has been from Vida quite a little, that is quite a burn in through there. He has been through Vida and up Gate Creek. There is quite a big burn up through there until one gets back on the mountain between the Calapooia side and the headwaters of the Mohawk, and then there is green timber from that on back, and this is bench land—dif-

ferent land. There are settlers in these various townships he has mentioned, people living on farms there, farming the lands. In township 16 and on Gate Creek, there are quite a few setlements in there. There is quite a good settlement up in what they call the forks of Gate Creek, and in townships 16 and 17, range 1 east, also. There are quite a good many settlers in township 17. He is not acquainted much with township 16 south, range 2 east, about Wendling, but is acquainted in and about Camp Creek, township 17, range 1 west of the Willamette Meridian there, and is pretty well acquainted with the lands in township 17, range 1 west, in the Camp Creek district. That is mostly farming country down in there. There are some settlements up the McKenzie River and in east there within ten or fifteen miles of the summit of the Cascade Mountains. He does not know exactly where this railroad grant runs, but if it runs up there it runs a good long ways, but he does not know exactly how far it runs. Township 16, range 2 east, is twenty-five miles beyond Vida, and Vida is in section 34, township 16 south, range 2 east. Twenty-five miles beyond, going east, would carry one outside the limits of the grant—that must be outside the limits of the grant because it is within ten miles of the county line. The grant does not extend to the summit of the mountains that he knows of. One leaves here and goes to the headwaters of the McKenzie, gets to the summit of the mountain, and this place that he speaks of is on what is called Lost Creek, at a little place called White Branch, owned by Mr. Lewis. Also on the same creek

just below him, there is what is called the Lost Creek station. They have been living on that for a good many years, and then just below, down at Foley Springs and Belknap Springs and McKenzie Bridge.

Q. Now, Mr. Deadmond, in your opinion, what percenetage of these railroad lands could be rendered suitable for cultivation in this area that you are acquainted with?

A. Well, now, there is different land. The percentage is owing to what a man would want them for, for agricultural purposes. He would have to dispose of the timber for to make any cultivation.

Whereupon, witness testified that the timber would have to be removed to make the land suitable for agricultural purposes. Part of this is a timbered country and part of it is burned. It was a timbered country, but it is a big burn. There is not much merchantable timber on that burn, that is in there by Vida. It is quite a big burn in through there which has no merchantable timber to speak of. West of the meridian line, there would be one-half of that, after the timber was removed, that would be good for agricultural purposes and grazing. East of the Meridian, it would not go quite as much—probably one-third. West of the meridian, he believes, there could be pretty nearly half of that which could be plowed after the land was cleared. These lands are a good deal the same in general formation and soil as the lands that he farmed up there, on which he lived in that locality. He knows from experience that these lands

are productive and will produce good crops—he thinks they will, of course, there are exceptions. In some places he does not think one could raise anything on it, due to stony land. There would be breaks in the timber or forests, there would be small burns, and then a good big strip of timber. But in lots of cases the timber extends right along for several miles. Lands similar to this area have been successfully farmed and are being successfully farmed now—part of it—that is, lands that have been timbered and cleared.

Q. About what areas do these men cultivate over, those farmers that live in this area, about how many acres do they generally have under cultivation?

A. Well, there is some places that they run different amount of acres. Some small places that they are farming, and some that is larger. Some in that territory there is fifty or sixty or seventy acres.

Whereupon witness testified, that of the men that are actually farming there, engaged in that business, making a living, take it all around up there, it will run twenty to twenty-five acres that they are farming. This bench land produces first-rate, especially for fruit, it produces a little better fruit, to his notion, than the bottom lands—that is, what he has seen up on those benches, is better fruit. There is more or less of this bench land all the way through that country that he is acquainted with. It runs all over the mountains, climbs from one bench to another, and then on until one gets to the summit. There is what they call a divide on each

side of the river, and then clear on through to the Cascades—natural terraces.

Whereupon, upon cross examination, witness testified, that he bought this railroad land somewhere about 1882. He was the first purchaser. He went onto this land, he thinks, about a month after he bought it, and lived on the land for some seven or eight years. In addition to living on the land, he ran a logging business. The logs were rafted from there to Corvallis, some of them. He logged for Max Friendly of Corvallis, the Corvallis Lumber Company. During the time he lived on this piece of land, he was in the logging business most of the time.

Q. And that is why you wanted to get up there in that vicinity, so as to be handy to your logging?

A. Well, that was my business at that time, I went there on the river to log in the first place.

Q. That was the reason why you wanted to get up in that neighborhood so as to be handy to your logging business?

A. Well, it would be naturally the case, that I wanted to get handy.

Q. I just want to ask you if that was the reason?

A. Yes, sir.

Whereupon witness testified, that Foley Springs and Belknap Springs are summer resorts, pretty well up the McKenzie in the mountains. They are mineral springs, and places where people go in the summer and

spend a few weeks, do fishing and some hunting, going back into the mountains. During the winter they are not open except to the care-takers—that is about the way. They have located those springs, he supposed, for that purpose—for summer resorts. They are about fifty-six miles east of Eugene by wagon road, and there is a good stage road up there. The McKenzie Bridge is six miles below Foley Springs. There has been some farming there. Itis a great place there for fishing etc.—summer resorts. Of the people that have settled in there, some have settled recently and some of them have been in there for a good many years.

Q. Those that were in there a good many years ago, they catered to the summer trade, sold them vegetables, eggs, chickens and things of that kind, didn't they?

A. Yes, sir. Mr. Powers was there for a good many years.

Witness got some of the logs off of this piece of land that he bought. He thinks he cut off of this seventy acres, about as near as he can remember now, somewhere near two million feet of fir timber, and it had just a tolerably good stand. He does not think it was an average—not quite as good as the average. He thinks that he cut about two million feet off of this seventy acres, as near as he remembers now. This he cut off was sold along in the eighties sometime, for a sawmill at Corvallis. He did not raft the logs—they did the rafting. He delivered them to his people and they took them

in the water on his place, and they rafted them down to Corvallis. They did not go to Eugene. They went down the McKenzie River, which empties into the Willamette below Eugene, and from there they went to Corvallis. That was the customary way they had of getting logs down out of the mountains. When he farmed near Harrisburg, he was on a place that belonged to Mr. Kennerly, about five or six miles up the river from Harrisburg. It was on the prairie, south of Muddy. He was never on the Henry Schooling place out on Muddy, but knows pretty near where it is. This place is south of there eight or ten miles. That is all old settled country, it was taken up under the donation law. This was a donation claim that he was on there farming. It was valley land, practically always clear. In some locations in the early days when they settled in the Willamette Valley, the amount of oak timber, oak grubs and small fir was very much less than it is at the present time. He guesses that it is accounted for by the fact that the Indians in the early days used to burn the grass in this young timber and keep it from growing, and that since that has been discontinued the oak timber has grown up. The burns used to keep down the brush, and so on.

Q. And since the white men have come in and gone to enclosing the premises, and stopped this grass that used to be six or eight feet tall here in the Willamette Valley on the prairies, why, the oak grubs have grown up in a good many places that didn't have them before.

A. Not down on this level ground, not on the

prairie, I don't think.

Q. Some fir groves have grown up, haven't they, around about Salem and out beyond?

A. Up in there, but in the valley, in this farming at the time when those farms were taken up.

Q. It was always clear?

A. Yes, sir. On the hills this oak grub possibly has grown.

Whereupon witness testified, that there were some old donation land claims on the Mohawk River, about seventeen miles east of Eugene, and there were donation claims up the Mohawk quite a ways, settled in the fifties when he was a small boy. The foothills, some of them, were parts of these donation claims—they run up on these benches, and as one got further back into the mountains the saw timber began. About 1892 there was the biggest demand for timber lands, as he recollects it, outside of this local demand for sawmills such as he supplied. The general demand for timber, he thinks, was the biggest about 1892, when there was quite a little rush—1892 and 1896 they were after the timber, he thinks, that is as far back as 1896. He does not remember exactly what year it was that the Booth-Kelly Lumber Company began to operate around Wendling and Saginaw and up in that country. The timber demand became pretty active after they began to buy in there, and just shortly before they went in, and since that time there has been pretty good demand for timber lands. Some of these lands he has cruised over himself.

He would go on some of those timber lands that they have had, and was logging it off by forty acres, etc. He would go and cruise that before he went to work on it, to see how many million feet he was going to get off. He logged the timber on contract with the owner of the land, the owner would sell some of the stumpage for seventy-five cents, and some for one dollar, he thinks, that is, the time he was speaking of when the Booth-Kelly Lumber Company went in there. He logged for those farmers, that is for people that had small pieces of land there, and they got different prices for their timber. Some of them would get as high as a dollar, from that down to fifty cents, depending on the distance from water, and what they wanted to get it off this land. These settlers that he speaks of up there up where this timber was, aside from those who have settled on donations and along the little streams, have gone in there in the last few years, since he had been in the logging business. He was in the logging business in 1877, and there has been quite a little bunch of settlers in there since. He has been around over that timbered country and noticed a good many people had purchased timber quarters under the Timber and Stone Act. The class of people generally who bought under that act had the money to pay for it. He thinks they paid two dollars and a half an acre for it. He noticed whether any of these homesteads were up there on the timber lands.

Q. Has your experience informed you as to whether or not a good many of these, or some of these homestead claims, located on these timber quarters of good value,

the improvements were abandoned after they had got their title or made their final proof?

A. Well, there is a question there that is a little different to me. There is homesteaders that went in there in this here timber belt that never complied—he was not a homesteader, he was a speculator.

Q. But he used the homestead law for the purpose of getting title?

A. Yes, he must have done it, because he never done anything on it.

Q. And he would simply build a little shack and go out and stay.

A. That is some.

Q. I understand. Go out and stay two or three nights in the six months, and clear up a quarter acre for a garden, and sleep there two or three nights? He would do that until the 14 months expired, and if he had $2.50 an acre, he would commute and get his patent?

A. Yes, sir.

Q. Or he would stay the five years in this way, and work out, and finally get his patent?

A. Yes.

Q. Then he would vacate his premises and sell it for timber?

A. Well, no; not all those that lived the five years.

Q. But, generally speaking, they commuted, those fellows that wanted to sell?

A. Yes, those that commuted generally come there 14 months, as you say, and get the title, and probably you wouldn't see them any more in there. I call them speculators.

Q. Some of these people would be men who were working for the timber companies and sawmills, and would go out as hired men?

A. Yes, sir.

Q. Wasn't it a common thing for them to say: "Now, gentlemen, you can get $300 or $400 by using your homestead right for me, and I will put up the money when the time comes, and you will convey it to me." Wasn't that a common practice?

A. Well, I heard that talked, yes.

Q. And that was done quite generally in this timbered section. Isn't that right?

A. Yes, sir.

Whereupon, upon redirect examination, witness testified, that he had mentioned as resorts Foley Springs and those soda springs up in the mountains. Those springs are beyond the limit of this grant quite a distance, as shown by the distance from Vida, quite a distance east of that as shown on the map there. He could not tell how far they are from this town of Vida. It must be twenty miles up there, by wagon road, and they are fifty-six miles from Eugene by wagon road. These resorts are in the Forest Reserve.

Q. Now, if this land was divided into 160-acre

tracts, Mr. Deadmond, about what would be the average amount of land that could be cultivated in each 160-acre tract?

A. You mean the entire tract clear east?

Q. I mean the lands, the railroad lands, that you are acquainted with there in the area that you have testified to.

A. I think it would go forty per cent, something like that. That is, after the timber was removed.

Q. Yes, after that is what I meant. What is your opinion as to whether these tracts would be suitable for settlement for farming purposes, as a homesteader, bona fide homesteader?

A. A good many of them would make homesteads, if they was cleared up, and timber cleared. A good many of them would make nice little homes.

Q. Now, you spoke of hometsead claims in that vicinity there, some speculative homestead claims and other homestead claims. Now, please explain what you mean by that, Mr. Deadmond?

A. What I mean by that, there was some of those settlers went in there and improved the land when they bought them, and cleared it up, and made nice little places, while others did not do anything, only just simply built a little shack and go off.

Q. Do you mean the homesteaders who went in and improved? Did they continue to live on their lands?

A. Yes, sir.

Q. And are living there on it?

A. They proved up, and some of them is still living on it.

Q. They took them up for homes?

A. Yes.

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